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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Iraq

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Iraq prepared by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/74 of 6 March 1991 and Economic and Social Council decision 1991/256 of 31 May 1991 (see annex).

ANNEX

Interim report on the situation of human rights in Iraq prepared by Mr. Max van der Stoel, Special Rapporteur

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I. INTRODUCTION

1. At its forty-seventh session, the Commission on Human Rights adopted on 6 March 1991 resolution 1991/74 entitled "Situation of human rights in Iraq". Resolution 1991/74 referred to reports of various serious human rights violations, viz. "enforced or involuntary disappearances, mass extrajudicial executions, torture and arbitrary detention", in addition to the use of chemical weapons "on the Kurdish civilian population, ... the forced displacement of hundreds of thousands of Kurds and the destruction of Kurdish towns and villages ... and ... the deportation of thousands of Kurdish families". Further specific reference was made to the denial of "freedom of expression and of the press".

2. Taking note of the report of the Commission's Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20, paras. 217 to 236), the report of the Commission's Special Rapporteur on summary or arbitrary executions (E/CN.4/1991/36, paras. 269 to 289) and resolution 1990/13 of the Subcommission on Prevention of Discrimination and Protection of Minorities of 30 August 1990, the Commission expressed its "grave concern at the flagrant violations of human rights by the Government of Iraq". The said resolution additionally urged the Government of Iraq "to ensure full respect for human rights and fundamental freedoms", calling in particular for the halt of "arbitrary and summary executions as well as the arbitrary detention of political and religious opponents" and for putting to an end "the practices of enforced or involuntary disappearances and the practice of torture". The Government of Iraq was further urged to "guarantee full respect for human rights of all persons in Iraq irrespective of their origin, halt deportation of Iraqi citizens and allow the deported persons to return to their villages of origin and receive reparation for the damage suffered as a result of their forced displacement".

3. By resolution 1991/74, the Commission requested its Chairman to appoint a special rapporteur to make "a thorough study of the violations of human rights by the Government of Iraq". In so doing, the Special Rapporteur was more specifically directed by the Commission to consider "all information the special rapporteur may deem relevant, including information provided by intergovernmental and non-governmental organizations and any comments and material provided by the Government of Iraq". The said resolution further urged the Government of Iraq to cooperate with the Commission and "to afford all necessary assistance to the Special Rapporteur".

4. With respect to the procedural terms of the Special Rapporteur's mandate, the Commission required that a report be submitted to the Commission at its forty-eighth session and that an interim report be submitted to the General Assembly at its forty-sixth session.

5. On 31 May 1991, the Economic and Social Council adopted decision 1991/256 approving Commission resolution 1991/74.

6. Pursuant to Commission resolution 1991/74 and Economic and Social Council decision 1991/256, the Chairman of the Commission appointed, on 25 June 1991, Mr. Max van der Stoel as Special Rapporteur.

7. Following the terms and references contained in Commission resolution 1991/74, the Special Rapporteur on the situation of human rights in Iraq therefore submits this interim report, outlining the course of study undertaken and providing information on the nature and content of the discourse thus far established with the Government of Iraq.

8. Given the evident breadth and complexity of the matters being studied, matters further compounded and clearly exacerbated by a continuing state of war in Iraq through much of the past decade and states of civil unrest in certain parts of Iraq at various times in Iraq's recent history, the Special Rapporteur points out that the approach taken has necessarily been one of careful consideration of all the relevant factors affecting the situation of human rights in Iraq. Moreover, the volume and extent of allegations of human rights violations by the Government of Iraq so far received by the Special Rapporteur (whether in concern of civil and political rights or economic, social and cultural rights), and each day increasing, are such as to necessitate considerable and detailed examination. Respecting the propriety and necessity of seeking the Government's response to this volume of allegations, the process of study has further dictated a programme of exchanges of information and views as detailed below.

9. In the conduct of his study, the Special Rapporteur has sought and received information on the situation of human rights from numerous individuals and organizations. This information continues to be sought and received on a daily basis.

10. On 22 July 1991, the Special Rapporteur addressed a letter to the Minister for Foreign Affairs of the Republic of Iraq in which he expressed his interest in establishing direct contacts with relevant authorities of the Government of Iraq on all matters pertaining to his mandate. Subsequently, a meeting took place on 27 August 1991 between the Special Rapporteur and the Counsellor of the Permanent Mission of the Republic of Iraq to the Office of the United Nations at Geneva. At the meeting, the Counsellor conveyed the message that the Government of Iraq intended to cooperate fully with the Special Rapporteur, with such cooperation including acceptance of a visit to Iraq. In reply, it was suggested by the Special Rapporteur, and thereupon agreed, that the best course of action would be to initiate the study by a written exchange which would be followed by a visit to Iraq. The agreed time-frame required the submission of a memorandum by the Special Rapporteur to the Government of Iraq by mid-September, allowing the Government of Iraq one month to reply; further exchanges and study could be accommodated through the end of the calender year with the visit to take place around the New Year. It is the opinion of the Special Rapporteur that in this way he shall be able to collect as much information as possible prior to visiting Iraq, thus making a visit more meaningful and productive. Further, the Special Rapporteur hopes that this programme shall place him in a position to

report in a comprehensive manner, presenting the most up-to-date information available, to the Commission on Human Rights at its next session.

11. Following the above programme, an initial memorandum summarizing various allegations of human rights violations, and seeking information thereon, was sent by the Special Rapporteur to the Minister for Foreign Affairs of Iraq on 16 September 1991 (see para. 12). A reply from the Government of Iraq was received on 25 October 1991. The texts of the memorandum and of the reply are reproduced below in sections II and III, respectively.

II. MEMORANDUM OF THE SPECIAL RAPPORTEUR

12. By the following letter, addressed to the Minister for Foreign Affairs of the Republic of Iraq and dated 16 September 1991, the Special Rapporteur communicated a memorandum concerning allegations which he had received:

"Excellency,

"With reference to Commission on Human Rights resolution 1991/74, by virtue of which I was appointed Special Rapporteur on the situation of human rights in Iraq, I have the honour to refer to my recent meeting of 27 August 1991 with Dr. Al-Kadhi, Counsellor at the Permanent Mission of the Republic of Iraq to the Office of the United Nations at Geneva.

"Let me first express my sincere appreciation for your Government's offer, communicated through Dr. Al-Kadhi, of full cooperation with my mandate, including an offer to entertain a visit by me to Iraq.

"In the course of the aforementioned meeting of 27 August 1991, a general programme of cooperation was discussed. To recapitulate, it was agreed that a written exchange would take place prior to the submission of my interim report to the forty-sixth session of the General Assembly under the terms of resolution 1991/74. It was also agreed that I would submit a memorandum to your Government in mid-September, to which your Government would reply before mid-October so as to enable me to present the position of your Government to the General Assembly.

"With the intention of visiting Iraq as close as possible to the date of submission of my report to the Commission on Human Rights at its forty-eighth session in February 1992, it was agreed that I would visit Iraq in early January 1992. In terms of the programme of my visit, I would like to reiterate my requests for the honour of audiences with the President of the Revolutionary Command Council, the Foreign Minister, and such other Ministers of Government as may be appropriate, along with unrestricted access to all parts of the country and to such establishments, centres, compounds, buildings, documents, persons, etc., as may be deemed necessary for me to carry out my mandate, accompanied by such United Nations personnel and necessary advisers as would be required for the fulfilment of my tasks. Having been advised that the Ministry of

Foreign Affairs would be the coordinating office for my visit, I shall submit to you the full details of my anticipated visit in due course.

"With the above in mind, I submit to you herewith my memorandum to which I shall await the receipt of your reply. I consider it of the greatest importance in the conduct of my work to have access to first-hand information and to be fully aware of the views of the Government of Iraq at all times in order that I may properly inform the General Assembly and the Commission on Human Rights on the situation of human rights in your country. To this end, and while I fully appreciate the technical constraints affecting communications at this time, I must stress the importance of receiving your reply to the enclosed memorandum by 15 October 1991. Of course, should you have something to add after that date, I shall always be available to receive any such supplementary information thereafter.

"Accept, Excellency, the assurances of my highest consideration.

Max van der Stoel
Special Rapporteur of the
Commission on Human Rights on
the situation of human rights in Iraq."

13. The following paragraphs reproduce the memorandum which was attached to the above letter.

A. Arbitrary detention

14. Notwithstanding constitutional guarantees against arbitrary arrest and detention, allegations have been made that thousands of persons have been arrested and detained by government forces without ever being informed of charges against them, without access to legal counsel or due process of law, and often without the opportunity to contact their relatives or anyone else. It has been further alleged that such practices of arrest and detention extend to women, children and the elderly. Please comment on these general allegations.

15. As a general matter relating to the detention of persons, please indicate whether or not an equivalent to a writ of habeas corpus is available to detainees, or, in any event, the maximum duration of time a person may be lawfully held in detention without being informed of the charges underlying his detention and without being brought before a court or judge. If an equivalent to a writ of habeas corpus does exist, please indicate the number of applications received and granted in this regard over the last year. Where lawful exceptions to the application of the rule exist, please indicate the number of persons taken into custody in the last year without the possibility of recourse to habeas corpus or an equivalent safeguard.

B. Disappearances

16. With reports of disappearances dating back many years, and 3,562 cases under consideration by the United Nations Working Group on Enforced or Involuntary Disappearances still unresolved, it has been alleged that this practice has been employed systematically throughout the country as part of a general programme aimed at quelling opposition. A particularly significant incident reported among these allegations concerns the disappearance of some 8,000 Kurdish Barzani tribesmen (including more than 300 children) taken from camps at Qushtapa and Diyana in Arbil on 30 July 1983, the names and particulars of 2,280 of whom appear on a list transmitted by the United Nations Working Group on Enforced or Involuntary Disappearances to the Government of Iraq on 29 July 1988. With reports of widespread disappearances still being made in connection with, inter alia, the March 1991 uprisings, the 20 March 1991 arrest of the Grand Ayatollah Sayyid Abul Qasim al-Khoei along with many of his family and associates (see paras. 38 to 40), the April and July 1991 amnesties (see paras. 43 to 46), and recent and continuing disturbances in the Kurdish Autonomous Region, please comment on these allegations, indicating the procedural recourses available for the investigation of such reports, and whether or not there has been established an independent national commission of inquiry into the problem. In particular, please provide detailed information on the whereabouts of those persons named in appendix 1 hereto who reportedly disappeared in southern Iraq in March 1991.

C. Torture, inhuman or degrading practices

17. Numerous allegations have been received that torture and other cruel, inhuman or degrading practices are widely used by national security forces (whether military or police forces) throughout the country, that such practices constitute regular techniques for the extraction of confessions from persons held in detention and are, in fact, part of a structured programme of repression aimed against opposition groups. Specifically, it has been alleged that various types of torture and physical abuse (including beatings, burnings, extraction of finger-nails, sexual assaults, electric shocks, acid baths, and deprivation of food, water, sleep or rest) and psychological abuse (such as subjection to mock executions) are regularly suffered by those in detention, particularly those detained or imprisoned for political offences. Moreover, in the course of alleged extrajudicial killings such as those reported in the north and south in March and April 1991, it has been alleged that persons suffered violations of the body including mutilation prior to actual death. Further, reports have been received, accompanied with photographic evidence, that women and children were strapped to tanks during the March uprisings in order to keep insurgent forces from attacking the tanks.

18. In the light of these very serious and continuing allegations, please comment, detailing available recourses for complainants, available procedures for investigation, and the means of disciplining violative security personnel, specifying the number of complaints received, investigations conducted, and

security personnel disciplined in each of the last four years. In this connection, please also indicate those measures which have been taken to implement the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975).

D. Extrajudicial killings

Political killings

19. It has been alleged that political killings commonly occur in (and outside) Iraq in order to maintain political power within the country. From the murder of village mayors to Ministers of State and from high-street assassinations to elaborate extraterritorial thallium poisonings, reports suggest that such political killings are carried out by government agents. In addition to evident assassinations are the largely unexplained helicopter accidents that took the lives of General Abdul Rashid in August 1988, General Salman Shuja in September 1988, and Minister for Defence Adnan Khairallah Talfah in June 1989. In commenting on these serious allegations, please indicate those post mortem procedures which are available and have been used in investigations of such incidents.

Summary or arbitrary executions

20. Reports of arbitrary or summary executions have been constant since the summer of 1979, affecting both members of the Government and civilians. In particular, arbitrary or summary executions are said to have become more and more frequently carried out as a general form of terror suppressing opposition sentiments, or as reprisals against specific groups or persons such as in relation to Kurdish guerrilla attacks during the mid-1980s to the late 1980s, and in the course and aftermath of the March 1991 uprisings in the north and south. In terms of these latest events, information has been received alleging: the summary execution of some 150 men and boys taken to the Al-Mahawil Garrison near Al-Hilla on 16 March 1991; the summary execution of another 70 civilians in Al-Hilla on 19 March 1991; the summary execution of scores of persons during house-to-house searches for insurgents in Al-Samawa between 20 and 29 March 1991; the arbitrary execution (e.g. through injuries sustained when thrown out of windows) of some 70 patients and medical personnel in Al-Hilla hospital on 9 March 1991; the summary execution of hundreds of civilians in Qara Hanjir between 27 and 29 March 1991; the summary execution (by burning) of 40 persons in Arbat on 3 April 1991; the summary execution (by firing squad) of 17 persons in Arbil on 17 April 1991; and the massive and indiscriminate bombings and machine-gunnings cited in paragraphs 22 and 23. It is further alleged that such executions are continuing to take place throughout the country, particularly in the northern Kurdish Autonomous Region, in southern Shiah centres, and in the southern marshes.

21. In view of the seriousness of the many allegations referred to above, please comment, indicating whether or not any government inquiry has been constituted to consider these allegations. In so doing, please specify such civilian and military laws as may exist which may permit the prosecution of those responsible for such crimes, citing the number of such prosecutions that have been made in each of the last four years. In addition, please indicate the legal recourses available to the relatives of the victims, citing the number of times such procedures have been resorted to in each of the last four years.

E. Control of civil disturbances

22. In reaction to various public demonstrations and civil disturbances aimed against the Government, it has been reported that the Government has employed extreme and indiscriminate measures resulting in the injury, maiming and death of thousands of persons, including women, children and the elderly. Of note in this connection is the use of chemical weapons on the town of Halabja in March 1988 in which an estimated 5,000 unarmed civilians died, followed by the reported use of chemical weapons on various other villages in northern Iraq during August 1988. More recently, it has been reported that indiscriminate bombardment of residential areas of Basra, Najaf and other southern cities during the March 1991 uprisings included the use of phosphorous bombs and napalm. During the uprisings in northern Iraq, indiscriminate bombardment of residential areas of Chamchamal (1 to 8 April 1991), Altin Kopri and Zakho (30 March 1991) reportedly killed hundreds of civilians, while numerous refugees on the Arbil-Salahuddin and Rawanduz-Haj 'Omran roads were reportedly attacked by helicopter gunships on 31 March 1991 and 1 to 8 April 1991, respectively. Concerning this same period, several reports have been received alleging instructions by Iraqi military and security forces for immediate civilian evacuation of whole towns and larger population centres under threat of the use of chemical weapons and gases.

23. In view of the serious nature of these widespread and continuing allegations (and notwithstanding the equally serious issues raised by these same incidents in the context of paragraphs 19 to 21, please comment on their substance, specifying government policies dealing with control of civil disturbances, existing controls and prohibitions on the use of weapons of indiscriminate destruction, and the available legal recourses against those responsible for employing such measures in violation of controls and prohibitions. Please also indicate the steps which have been taken to implement the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990), and whether or not any government inquiry has been established to consider the above allegations.

F. Hostage-taking and the use of persons as "human shields" during hostilities

24. In connection with the detention in 1990 of several thousand foreign civilians within Iraq, and their acknowledged distribution around the country as "human shields" designed to dissuade attacks on potential targets of war within Iraq, together with the subsequently similar treatment of prisoners of war captured in early 1991, please provide the legal basis of these detentions and treatment, citing the relevant orders, and noting those measures which have been taken to afford compensation to the victims.

G. Laws in force

Political organization

25. It has been widely alleged that the present Constitution and composition of the Government of Iraq does not represent the freely expressed will of the people of Iraq, and that divergencies from the democratic principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are manifest in an unaccountable executive power that routinely bypasses even the ostensible institutions of democratic government. In view of these allegations, please provide the following information requested.

26. With respect to the legal status of the Revolutionary Command Council, please explain its constitutional relationship with the National Assembly. Please also indicate: the constitutional powers of the President of the Revolutionary Command Council; the nature of the Revolutionary Command Council's accountability to the general population; the number of times in the last two years that the National Assembly has rejected bills originating from the Revolutionary Command Council, and the number of bills it has approved; and the number of decrees promulgated by the Revolutionary Command Council in the last two years. In relation to decrees of the Revolutionary Command Council in general, please specify whether or not they supersede normal laws or whether they must be subsequently endorsed by the National Assembly. In addition, please indicate the date of the last general national elections (including a copy of the pertinent elections laws) together with the anticipated date(s) of the next general national elections. With regard to regional and local government, please indicate the immediately previous occupations and basis of authority (i.e. whether they were appointed or elected, by whom, when and for how long) of the governors of all regions and the mayors of all cities with populations exceeding 250,000.

Functioning of the judiciary

27. According to various reports, there is considerable doubt concerning the independence of the judiciary from the powers of the executive. These doubts surrounding the administration of justice in general are compounded by additional allegations that many appointed members of the judiciary are not

properly qualified and that, in any event, a large part of the administration of criminal justice and laws entailing serious penalties against the person are administered outside the normal judicial system. With regard to these allegations, please provide the following information requested.

28. Please indicate the method of appointment of members of the judiciary (both regular and special courts), detailing such professional requirements as are necessary for appointment to the judiciary. In this connection, please indicate the names and immediately previous occupations of all higher court justices (of both regular and special courts).

29. With reference to Law No. 180 of 1968, amended by Laws Nos. 1, 85 and 120 of 1969, please explain the constitution of the Revolutionary Court established in Baghdad under this Law. In the functioning of this Court, please indicate the percentage of cases resulting in findings of guilt, and describe the process of appeal permissible from the Revolutionary Court noting the percentage of successful appeals from the findings of this Court.

30. As regards the composition, constitution and functioning of the numerous special and temporary courts (including the Revolutionary Court) variously established throughout the country, please provide details of the scope of judicial functions assumed by these courts. In so doing, please indicate the number of death sentences and sentences of lengthy incarceration declared by these courts in each year since 1987, noting the total number of such sentences declared by all civilian courts in these same years.

31. In the practices of the Revolutionary Court and other special and temporary courts, please indicate the percentage of trials conducted in camera, the percentage of defendants represented by lawyers of their own choosing, and the percentage of convictions reviewed on appeal.

Offences

32. In view of the continuing force of various broadly applicable and imprecise laws (carrying extreme penalties for violators) prohibiting such things as "insults against the President", it has been repeatedly alleged that freedom of speech and other liberties guaranteed by those human rights instruments to which Iraq is a party are severely curtailed if not fully undermined. Indeed, it has been further alleged that the existence of such laws, broadly interpreted and widely employed, is at the foundation of a system of repression that permeates the general population. On the basis of these allegations, please provide the following information requested.

33. Under the terms of Revolutionary Command Council Decree No. 840 of 4 November 1986 (appearing in the Iraqi Official Gazette of 17 November 1986) which prescribes severe penalties including death for, inter alia, anyone directing slanders or insults against the President of the Revolutionary Command Council or anyone representing him, the Revolutionary Command Council, the Al-Baath Party, the National Assembly or the Government, please indicate the number of people prosecuted and found guilty under this law in each year since its promulgation, specifying the actual sentences declared in each case.

34. In relation to article 164 of the Penal Code, under which "any person who, in time of war, attempts to jeopardize the military, political or economic situation of Iraq" may incur the death penalty, please indicate the number of death sentences declared under this law in the course of the last year.

35. As regards Revolutionary Command Council Resolution No. 461 of 31 March 1980, retroactively applying the death penalty to persons having been members of the Shiah fundamentalist Da'wa Party, please specify the number of persons charged under this Resolution, noting the names of those sentenced to death.

36. With respect to the rules and regulations applying to membership in the Al-Baath Party, please indicate the number of persons who have been charged under: article 200 of the Penal Code (making it a capital offence for an Al-Baath Party member to conceal his previous party affiliations); Law No. 107 of 1974 (making it a capital offence for an Al-Baath Party member to maintain links with any other political party or organization); Law No. 145 of 1976 (making it a capital offence for a former Al-Baath Party member to have any connection with any other political party or grouping); and Law No. 111 of 1978 (making it a capital offence to recruit into another political party or grouping anyone who has or has had any organizational relationship with the Al-Baath Party). In relation to each of these laws, please also provide the names of all persons sentenced to death under these laws.

37. As concerns political offences in general, please provide a list of all such offences carrying penalties of incarceration or death, indicating the number of persons arrested under these laws in each year since 1 January 1988, and detailing the names and specific offences of all persons sentenced to death for such crimes over this same period.

H. Individual cases

Situation of the Grand Ayatollah Sayyid Abul Qasim al-Khoei

38. According to information received, the Grand Ayatollah Sayyid Abul Qasim al-Khoei was arrested in Najaf on 20 March 1991 along with members of his family and associated scholars, was taken in custody to Baghdad, and has since been returned to Najaf where he remains under continuous surveillance, restricting his personal liberty.

39. With respect to this case, please provide the following information requested:

(a) A detailed account of the legal basis of the Grand Ayatollah's detention and that of those taken into custody with him, including copies of the laws sanctioning the arrests and detentions;

(b) A detailed description of the terms of the Grand Ayatollah's detention, including whether or not he is permitted to receive visitors of his own choosing and at his discretion or on any other terms;

(c) An account of the whereabouts of those persons reportedly arrested with the Grand Ayatollah, as named in appendix 2. In this connection, please specify the whereabouts of those subsequently released and/or the date(s) of their release from custody, or the places and terms of detention of those persons named in appendix 2 who continue to be held in custody.

40. As regards the general health and well-being of the Grand Ayatollah, assurances are requested that proper and necessary health care be provided including those medicines and treatments required for his heart ailment.

Situation of Mr. Ian Richter

41. According to information received, Mr. Ian Richter, a British national, was arrested on 17 June 1986 at Baghdad International Airport, was subsequently tried for offences of bribery and corruption under the Iraqi Criminal Code, and has since been imprisoned in Iraq serving a sentence of life imprisonment.

42. With respect to this case, please provide the following information requested:

(a) A summary account of the process of law against Mr. Richter from the date of his arrest through to his present incarceration, including account of all places of his detention before, during and after his trial;

(b) A detailed description of the charges brought against Mr. Richter, the constitution of the court before which he was tried, and the evidence upon which he was found guilty. In this connection, please specify the date on which Mr. Richter was informed of the charges against him, the names of witnesses brought by Mr. Richter in his defence, the number of times and the length of each time Mr. Richter was allowed to consult with a lawyer, and whether the defence lawyer was appointed by the Government or was freely chosen by Mr. Richter;

(c) A detailed description of the appeal process granted to Mr. Richter, together with the results of such appeals.

I. Effects of recent amnesties

43. In keeping with practices dating at least from 1988, the declaration of amnesties has been reported from Iraq during 1991. According to information received, there were a series of amnesties declared in April subsequent to the internal uprisings in the north and south of Iraq, and another amnesty recently declared in July. While the declaration of recent amnesties has been generally applauded in several quarters, allegations remain that the amnesties

are also used as a means of rounding up members of opposition groups, and that the terms of the amnesties are frequently violated by government agents who arrest certain persons returning out of places of hiding (within Iraq or beyond) in order to take advantage of these declarations. Several reports allege that persons already detained, as with several of those arrested during (and in violation of) the amnesties, rather than being released have actually "disappeared" in the custody of the Government. In this connection, please respond to the following requests.

44. With respect to the April amnesties (beginning with the initial announcement of the Revolutionary Command Council on 5 April and subsequently extended in scope and time), please forward copies of all relevant decrees and indicate the number of persons who may be said to have taken advantage of the amnesties together with the number and names of those released from detention under them. Please also indicate whether any foreigners were permitted to benefit from these amnesties, whether in fact any did, or, if not so permitted, the number of foreigners (citing names and nationalities) held as a result of their participation in the activities for which the amnesties were accorded to Iraqi nationals. In relation to this last matter, please also indicate the number of foreigners (citing names and nationalities) killed during the insurgencies.

45. In the light of significant and repeated allegations that certain persons taking advantage of the April amnesties, particularly Kurds in the city of Arbil, were detained upon their return, taken to the city stadium, subjected to punishments or executed, or have subsequently disappeared, please comment on these allegations.

46. With regard to Decisions Nos. 241 and 242 of 21 July 1991, issued by the Revolutionary Command Council, granting general and comprehensive amnesties to "fugitives for political reasons", Iraqi prisoners and detainees convicted of political offences, and military service deserters, please indicate the number and names of persons who have taken advantage of these amnesties, especially those released from prisons or centres of detention.

J. Treatment of ethnic groups

The Kurdish minority

47. The Special Rapporteur has noted the 1991 reports submitted and representations made by the Government of Iraq before the United Nations Committee on Human Rights and the United Nations Committee on the Elimination of Racial Discrimination, referring to the extensive legal provisions securing the rights of the Kurdish minority in Iraq, particularly in the Kurdish Autonomous Region. Nevertheless, evidence of the implementation of these guarantees is lacking and the effectiveness of these laws is uncertain in the face of considerable allegations of oppression. In addition, the massive flight of people from Kurdish regions (essentially unaffected by the Gulf war) after the March 1991 disturbances is alleged to be evidence of the extensive

fear instilled in the population after many years of general oppression. In the light of the related allegations of the use of extreme measures, including the aforesaid use of weapons of indiscriminate destruction, against the Kurdish population on many occasions over several years, and in view of the reports of regular expulsions of Kurds to Iran or their forced resettlement in newly established villages and city suburbs, please comment on the massive exodus of Kurds in April 1991. In so doing, please indicate the percentage of ethnic Kurds in the National Assembly, the method of appointment of the Executive Officers of the Kurdish Autonomous Region, and explain the June 1986 law requiring candidates for the Kurdish Legislative Council to have a well-established record of fulfilling Al-Baath Party objectives. In addition, please indicate those measures which are presently being taken to guarantee the health, lives and property of the Kurds, noting the degree of active participation of Kurdish representatives in the administration of these programmes.

The Turkoman minority

48. With respect to the Turkoman population centred in and around Mosul and Kirkuk provinces, please describe those measures which have been taken to assure Turkoman participation in the government of these regions. In so doing, please respond to allegations that the limitation on the sale of Turkoman-held real estate only to Arab Iraqis (effected through the requirement of special licences), in conjunction with the practice of granting confiscated Turkoman properties to resettling Arab Iraqis, is part of a structured programme to alter the ethnic ratios of the populations of these regions. Further, please specify the extent to which the Turkoman language may be used in public institutions in those regions with large Turkoman populations.

The practice of expulsion

49. According to information received, large groups of persons who have been resident in Iraq for generations before Iraqi independence have been expelled from Iraq in recent years on the basis of the argument that they are not Iraqi nationals due to their ethnic lineage. It has been further reported that there exist, in fact, various types of Iraqi "nationality" such that millions of people live in constant fear of being deported. In this connection, please comment on these allegations and reports, providing copies of Iraqi laws pertaining to nationality and deportation.

K. Religious practices and cultural properties

50. In the light of considerable reports of widespread harassment of religious leaders, scholars and students, the closing of their centres of learning and worship and/or the destruction of such schools, mosques and monuments, please provide the following information requested:

(a) The number of religious centres of learning, mosques, shrines and major monuments in each of Najaf, Karbala, Basra, Kirkuk, Arbil, Mosul, Dihuk, and Sulaimaniya as of 1 January 1988, and in those same cities as of 1 September 1991;

(b) The number of religious scholars and students (distinguishing Iraqi nationals from foreigners) resident in Najaf and Karbala as of 1 January 1991, and in those same cities as of 1 September 1991;

(c) The current conditions of Darul Hikma school, Qazwini school, Sheikh Tusi mosque and Al-Khoei Hussainiya in Karbala, together with the present condition of the Wadi Al-Salem cemetery in Najaf.

51. In addition to the information requested, comments and responses are invited on the following allegations communicated to the Special Rapporteur:

(a) Recent reports allege that there are no functioning religious centres of learning in Najaf and Karbala, including the ancient universities, at this time, and that the Al-Khoei school has been razed to the ground. Please comment on these allegations;

(b) Recent reports allege that the traditional call to prayer and pilgrimage in the holy shrines of Najaf and Karbala has been banned along with public prayers in these holy cities. In addition, it has been reported that many Shiah clergymen are banned from wearing their traditional uniforms and from performing their religious duties. Please comment;

(c) As a part of a general policy aimed against organized religion in general and the Shiah religious community in particular, it has been reported that more than 1,000 religious books have been banned by the Ministry of Information, and that various religious practices (such as Shiah traditional rituals about Imam Hussein) are prohibited both in public and in private places. Please comment;

(d) Recent reports allege that the holy shrines of Shiah Islam (especially in Najaf and Karbala) have been desecrated by government forces, have incurred severe damages, and have been sealed off from worshippers. Further, religious manuscripts and books in a number of libraries are said to have been either burnt or otherwise purposefully destroyed. Please comment, explaining government actions if true;

(e) Recent reports allege that reparations to the damaged shrines of Najaf and Karbala, including their ancient perimeter walls, are being carried out in such a way as to deface the religious art and to damage these cultural properties permanently. It is also alleged that these reparations are being conducted without consultations with the members of the local religious communities. Please comment, explaining government actions if true.

L. Access to food and health care

52. Information has been received that stores of food and medicaments are held by government authorities in secure facilities out of reach of the general public, and that access to these stores is available only to certain persons and organizations close to the Government. Moreover, and despite the severe conditions and shortages affecting the great majority of the population, it has been reported that military personnel and government officials enjoy ready access to these stores and have, in fact, received increases in their pay and benefits in recent months. Please comment on these reports.

53. In view of the severe post-war conditions affecting large parts of the population through the destruction of various parts of the health-care infrastructure, food-producing and food-distributing systems, please indicate those measures being taken to ensure sufficient allocations of available resources to meet the requirements of the population, particularly those most in need. In this connection, please indicate measures being taken to ensure fair and sufficient access to foodstuffs and medicines in the least-serviced areas, including rural areas, the regions of the north and south that suffered insurgencies in March 1991, and in the region of the southern marshes. With particular concern for those in the southern marshes, please also indicate measures being taken to provide clean drinking water for the residents and refugees situated there.

54. With regard to fair access to such supplies as exist, please indicate such guarantees as may exist which ensure priority access for the most vulnerable, for infant children, lactating mothers, the elderly and the ill. In addition, please also indicate such measures which guarantee equal access to basic necessities for all without distinction.

III. REPLY OF THE GOVERNMENT OF IRAQ

55. The following text constitutes the reply of the Government of Iraq to the memorandum of the Special Rapporteur which was received on 25 October 1991; some 120 pages of annexes submitted together with the reply are not reproduced. (For the titles of the annexes, see appendix below.)

Introduction

In our view, the question of human rights in any country, including Iraq, cannot be discussed without taking into consideration the economic, political and social background and the evident manner in which the situation is influenced by the factors of time and place. Under wartime conditions, human rights cannot be discussed in the same spirit and with the same degree of objectivity as in times of peace. A country with a long-standing democratic tradition cannot be compared with a developing country that is making diligent efforts to attain both democracy and economic prosperity. Every country has its own particularities and indigenous values which cannot be set aside in any discussion on human rights, especially in the light of the intensive dialogue which has given rise to controversy on this subject in various countries with different cultural or religious affiliations.

We have drawn attention to the above in the introduction to our reply to your questions because we wish to highlight the fact that the humanitarian, ethical and universal aspects of human rights are not doubted or questioned by us, since Iraq firmly believes in these rights. Moreover, it is an indisputable fact that human rights should be respected and promoted as a humanitarian facet of present-day life. They also constitute the basis for social development and they have a positive impact on the achievement of peace and justice at the international level.

Being motivated by this belief and perception, Iraq has already ratified a number of international human rights instruments and is carefully examining those which it has not ratified in order to adopt a clear, objective position thereon. Iraq has participated, and will continue to participate, in conferences, symposia and committees seeking to promote human rights at the national, regional and international levels. Our country is also faithfully fulfilling its obligations in regard to the submission of periodic reports on the evolution of the human rights situation in Iraq. It replies to the questions raised by the international bodies and non-governmental organizations concerned. Iraq has never defaulted in this regard, except on rare occasions and by reason of force majeure. Even the advent of the Iraq-Iran war, which was an exceptional period in Iraq's modern history, had little effect on Iraq's fulfilment of its obligations in this regard.

The sufferings of the Iraqi people throughout the period of foreign occupation, in which their individual and collective rights and their legitimate aspirations for dignity, freedom and sovereignty were disregarded, and the deliberate neglect or indifference shown by the previous political

regimes in Iraq for the question of human rights, were among the reasons which prompted the present political regime in Iraq to pursue a diligent policy reflecting the people's desire to strengthen and promote human rights. This popular desire was expressed in numerous resolutions and official documents, particularly the present Constitution, and was reflected in several legislative enactments affirming the need to respect the people's will, as well as their right to a decent life and their right to exercise their fundamental freedoms in a democratic environment conducive to the growth and development of their individual and collective personality.

The fact that Iraq is a relatively recently established developing country means that there are a number of constraints relating to the degree of development attained in the cultural, economic and social fields. Hence, recognition of, and belief in, human rights does not imply that they are put into practice, since major efforts are needed to resolve various practical problems.

Positive changes had been made since 1968. From that time until the start of the Iraq-Iran war in 1980, no serious violations of human rights were reported in Iraq. However, the Iraq-Iran war, the economic embargo which began in August 1990 and the Gulf war in 1991 inevitably had an impact on the human rights situation in the country.

Human rights cannot flourish in time of war, although respect for these rights increases when peace and tranquillity prevail. This was exactly what we began to witness after the cessation of military operations in August 1988 and until August 1990. During this short period, the current Constitution was reviewed and a new draft constitution was discussed. Several emergency laws and decrees that had been issued during the war were also re-examined and many of them were abrogated. The beginning of a new era was proclaimed in which citizens were allowed to travel without restrictions and freedom of the press was respected. This new era was also characterized by political pluralism and abrogation of the emergency laws and regulations which had restricted the freedom of citizens.

This new era soon started to wane as a result of the Gulf war and the economic embargo on Iraq.

This unjust economic embargo is still having an extremely adverse impact on the life and dignity of the Iraqi people and, consequently, on human rights in the economic, social, cultural, civil and political spheres. We are all aware that the insecurity, price rises and scarcity of basic foodstuffs and medicines resulting from the abnormal circumstances experienced by Iraq have all had a direct impact on the enjoyment of human rights by Iraqi citizens and on the State's ability to promote them.

The situation was aggravated by the total destruction of the country's infrastructure in the agricultural, educational, health, industrial and communication sectors. It is well known that the United States/European bombing destroyed bridges, fields, schools, streets, civilian houses,

hospitals and electricity and water supplies. Fear and chaos increased as gangs of ruffians, outlaws and military deserters, together with groups who had crossed the border from Iran, committed barbaric acts which were totally alien to the time-honoured values of Iraqi society. These barbaric acts included the murder, mutilation and rape of thousands of innocent civilians, and the pillaging and theft of public funds and private property in the areas where the disturbances took place. Hospitals, schools, universities and courts of law were destroyed and these outlaws even went so far as to set up "special courts" in which many innocent citizens were killed, including children, women and elderly persons, in addition to the physical liquidation of a large number of civil servants.

These criminal acts appear to have been planned in advance by foreign bodies; yet another page in the history of military aggression against Iraq for the achievement of well-known political ends.

Accordingly, these events can under no circumstances be regarded as an "intifada". It was an exceptional state of chaos, disorder and armed rebellion which soon ended, after only a few days, when order and authority were restored in the areas afflicted with this abnormal situation.

While the government troops were regaining control of these areas, the armed conflicts which occurred between the troops and those subversive groups inevitably led to loss of life among citizens, the security forces and those groups, some of which fled the country.

Finally, a general amnesty was granted to the persons involved in the disturbances, except those who had committed acts of murder or rape.

The re-establishment of order and tranquillity in these areas during a very short period of time highlights the fact that these disturbances characterized by chaos and lawlessness were provoked by the circumstances of the military aggression against Iraq and by foreign intervention.

However, in spite of the major tragedy experienced by Iraq, there are still some bright spots on which we would like to focus. The Government and people of Iraq have spared no effort to diminish the extent of the material and moral damage suffered by Iraqi society and its citizens, since the crisis and the continuing embargo are still having an adverse impact on the human rights situation.

In this connection, we wish to refer to the numerous amnesty decrees that were promulgated, the abolition of the Revolutionary Court and the abrogation or amendment of several laws and decisions issued during the war. Travel restrictions were lifted, the Political Parties Act was promulgated and a new constitution and press law for the country are also under preparation.

The criticisms levied against Iraq during the two wars, regardless of their validity, came as no surprise to us. We have already replied to these criticisms on the basis of the available information, although it was

impossible for us to reply in some cases due to the lack of reliable information, particularly in regard to the disappearance of many persons who have not yet been traced and some of whom are included in the lists of "enforced disappearances".

How can a country, having fought a ferocious war like the one with Iran, an eight-year military conflict entailing human and material disasters, ascertain the fate of citizens missing in border areas which were the theatre of military operations from which people fled seeking safe refuge or which they were forced to leave due to the threat from armed bands? How can we imagine the possibility of promoting human rights, democracy and freedom under conditions of foreign occupation and intervention?

The State is faced with a difficult choice between defending the country's territorial integrity and national unity and ensuring the rule of law through the adoption of emergency measures to attain these objectives in a manner which might temporarily or marginally infringe some individual rights, or sacrificing everything.

We cannot therefore claim, in the light of this difficult situation, that human rights in our country are not beset by any problems or obstacles. However, the Iraqi Government has the resolute political will to overcome these obstacles so that human rights and fundamental freedoms can be better exercised in Iraq.

Finally, although the Special Rapporteur has not inquired about the impact on human rights in Iraq of the unjust economic embargo to which the Iraqi people have been subjected since August 1990, any talk of human rights in any country must necessarily touch upon the fundamental issue of whether its citizens have sufficient food and medicines, since this relates to the right to life, especially in the case of the most vulnerable categories of the population such as children, infants, pregnant women and the elderly. How could such a sensitive issue be disregarded by the Special Rapporteur and, in turn, by the United Nations Commission on Human Rights, by non-governmental organizations and especially by the members of the international community which show concern for the question of human rights?

We hope that the Special Rapporteur will give due attention to this sensitive issue, particularly in view of the fact that the scarcity or lack of basic foodstuffs and medicines has had a direct impact on the enjoyment of most human rights in Iraq, especially the right to life as exemplified by the loss of thousands of human lives.

In this connection, we wish to refer to the close interrelationship between economic, social and cultural rights, on the one hand, and civil and political rights, on the other, as affirmed in numerous resolutions adopted by the United Nations and human rights bodies, the most recent of which was United Nations General Assembly resolution 45/96 of 14 December 1990.

Replies to the Special Rapporteur's questions

Arbitrary detention

The questions concerning arbitrary detention were very general and abstract. To enable the competent authorities to answer them, they must refer to specific incidents and contain detailed information that can be verified. Accordingly, we will confine our reply to the legal framework of judicial and administrative detention and cases of such detention.

Detention by court order

Articles 20 and 22 of the Constitution guarantee the right to liberty. The provisions of articles 421-429 of the Penal Code prescribe very severe penalties for acts prejudicial to personal liberty and the inviolability of homes. These provisions apply to all persons, without any discrimination, and the penalty is increased if the offence is committed by a public official. The right of defence through the appointment of a lawyer is fully guaranteed by the explicit text of article 20, paragraphs (b) and (c), of the Constitution and article 144 of the Code of Criminal Procedure stipulates that the court must appoint a lawyer to defend a person accused in a criminal case. Article 92 of the Code of Criminal Procedure (Act No. 23 of 1972) stipulates as follows: "No one may be arrested or detained without a warrant issued by a magistrate or a court of law, except in circumstances in which such is permitted by law." Article 93 of the Code of Criminal Procedure further stipulates that: "The arrest warrant must contain the name, surname, identity and description, if known, of the person to be arrested, as well as his place of residence, his occupation, the type of offence with which he is to be charged, and the section of the law applicable thereto. The order must be dated, signed by the person who issues it, and stamped by the court." Under the terms of article 94, paragraph (b), of the Code of Criminal Procedure: "The person to be arrested must be shown the arrest warrant and, after his arrest, must be brought before the authority by which it was issued."

If the investigating officer exceeds his authority and contravenes the provisions of the law by subjecting persons to arrest or detention without a court order, the victim is entitled to lodge a complaint in person. A complaint can also be lodged by the Department of Public Prosecutions, by virtue of its authority to monitor investigation procedures as an impartial body in criminal cases, unlike the public prosecutors who conduct the investigation. Under article 1 (a) of the Code of Criminal Procedure, any person who is aware of the commission of such an offence, including the relatives of a person who has been unlawfully arrested or detained, has the right to file an application demanding that the arrested person be brought before the judiciary to make a statement in that regard. The perpetrators of the offence are liable to the legally prescribed penalty if the person concerned was detained arbitrarily. The system constitutes an application of the principle of habeas corpus.

The accused must be informed of the charges against him and must be brought before an examining magistrate within 24 hours from the time of his arrest (article 123 of the Code of Criminal Procedure) so that the competent examining magistrate can take a legal decision based on the facts presented to him.

Cases of administrative detention in 1990

The legal derogations from the principle that no one can be detained without a court order were confined to the power vested in the Minister of the Interior, under the terms of Revolution Command Council Decision No. 26 of 1971, to detain non-political persons suspected of criminal conduct. In 1990, 1,610 persons were detained for breaches of public order and morality. It should be noted that their detention orders were of an administrative nature and, consequently, were subject to appeal to the Administrative Court which was established under the terms of the State Advisory Council Act, as amended by Act No. 106 of 2 December 1989.

Cases of disappearance

Although the competent authorities are investigating the cases of disappearance mentioned in the report of the Working Group on Enforced or Involuntary Disappearances, reference must be made to the difficulties that the authorities are facing in their attempts to ascertain the fate of those persons, particularly since most of the cases of disappearance occurred during the Iraq-Iran war. Moreover, they occurred in remote and rugged border regions which were the scene of ferocious military operations that induced the local population to leave those regions. We believe that a large number of them fled to neighbouring States. It should be borne in mind that extensive areas of the border regions were subjected to Iranian military occupation for long periods. With regard to the figure of 8,000 unnamed missing persons that has now been submitted to us, this is something new that has not previously appeared in the report of the Working Group on Enforced or Involuntary Disappearances. This figure cannot be verified until detailed information has been received concerning all the individual cases concerned. With regard to the Barzani clan, we wish to refer to the two notes which our Mission sent to the Centre for Human Rights on 10 May 1990 and 20 June 1990, which read as follows:

> "The areas of Iraq which are inhabited by the Barzani clan were the scene of a number of military operations during the Iraq-Iran war when Iranian forces attacked the areas of Haj Umran, Banjwin, Choarta and Sidikan in northern Iraq in 1982, 1983 and 1984. That clan collaborated with the invading forces and facilitated their entry into those areas after providing them with all the reconnaissance information that they required. The clan also actually participated in the attacks which the Iranian forces launched against Iraqi military units, as a result of which many of its members were killed.

"When Iraqi forces recovered control over those areas and forced the Iranian forces to retreat across the Iraqi frontier into Iran, many members of that clan fled with the retreating hostile forces. In view of these events, during which many of them were killed during the battles and some of them fled to Iran, it is difficult for the Iraqi authorities to investigate the truth of the allegations contained in the note received from the Centre for Human Rights and, at the present time, it is impossible to ascertain the whereabouts of the persons who allegedly disappeared."

His Eminence Grand Ayatollah Sayyid Abul Qasim al-Khoei

His Eminence Grand Ayatollah Sayyid Abul Qasim al-Khoei was never detained. In this connection, it is sufficient to refer to the visit which Prince Sadruddin Aga Khan, the Executive Delegate of the Secretary-General of the United Nations, paid to Ayatollah al-Khoei at his residence on 12 July 1991. He can be visited at any time and no restrictions are placed on his personal freedom, since he receives Arab and foreign visitors and is carrying out his religious functions in a normal manner. With regard to the names contained in annex 1, we wish to state the following:

After a careful investigation, the competent authorities have ascertained that the persons named in the above-mentioned annex are not currently in Iraq and were probably either killed during the disturbances or fled to Iran, Saudi Arabia or other States with those who participated in the disturbances, particularly since, at that time, the State was unable to exercise full control over the border regions.

The disturbances

The persons who participated in the disturbances committed crimes punishable under Iraqi law, particularly murder, rape and other offences to which reference has already been made. When the State recovered its sovereignty and authority in the governorates in which those disturbances occurred, the persons who had participated in those disturbances and who had not fled across the borders into neighbouring States were taken into custody for questioning in the manner prescribed by law. On 5 April 1991, it was officially announced that the disturbances had been suppressed in all parts of Iraq. Revolution Command Council Decision No. 103 of 10 April 1991 granted a general and comprehensive amnesty to Iraqi Kurds in the Autonomous Region in respect of all the consequences of, and prosecution for, any act punishable by law which was committed during the disturbances. However, acts of murder, rape and theft were excluded from that amnesty.

The amnesty covered the advisers and members of the national defence regiments and members of the special detachments, special forces and internal security forces. The provisions of the decision applied to the persons covered thereby with effect from 5 April 1991 for one week if they were inside Iraq and for two weeks if they were abroad. The time-limit was subsequently extended by one week under the terms of Revolution Command Council Decision

No. 104 of 11 April 1991, and by a further week under the terms of Revolution Command Council Decision No. 105 of 17 April 1991. The Council then promulgated Decision No. 109 of 20 April 1991, extending the general and comprehensive amnesty granted in Decision No. 103 of 10 April 1991 to all Iraqis in northern, southern and central Iraq in respect of the consequences of, and prosecution for, any act punishable by law and which was committed during the disturbances and incidents involving treason. That amnesty did not apply to acts of murder, rape or theft. The decision ordered all the governmental agencies and armed forces to duly facilitate its implementation. On 29 April 1991, the Revolution Command Council promulgated Decision No. 121 granting Iraqi Kurds a general and comprehensive amnesty and exempting them from all consequences of, and prosecution for, any act punishable by law which was committed during the disturbances and the sabotage. The amnesty did not apply to acts of murder or rape. The provisions of the decision entered into force on 26 April 1991 for a period of one month. Decision No. 126 of 8 May 1991 granted a general and comprehensive amnesty to all Iraqi fugitives, wherever they might be, in respect of all consequences of, and prosecution for, any act punishable by law which was committed during the disturbances and the sabotage. Only acts of murder and rape were excluded from the amnesty. The provisions of this decision entered into force on 26 April 1991 for a period of one month. The Revolution Command Council also promulgated Decision No. 53 of 4 March 1991 granting an amnesty to fugitives, absentees and absconders guilty of evading military service, desertion or failing to report for duty. Decision No. 98 of 7 April 1991 covered fugitives, absentees and persons who had failed to register for military service but who had subsequently repented and joined their units before 4 March 1991. The time-limit specified in Decision No. 53 of 1991 was subsequently extended by Decision No. 60 of 1991 and Decision No. 73 of 1991, under the terms of which an amnesty was granted to persons who had participated in the disturbances but who had not committed acts of murder and rape. Persons not covered by those amnesties were arrested, questioned by the competent authorities and prosecuted for the offences they had committed.

Torture and inhuman or degrading treatment

Like many of the allegations against Iraq, the statements made in this connection were of a general nature and, as already indicated, cannot be answered unless the names, dates and details pertaining to specific cases are provided so that the competent authorities can conduct an investigation. We are willing to look into any specific allegations and to cooperate with a view to clarifying those cases.

The prohibition of torture under Iraqi law and the prosecution of persons guilty of torture

Iraqi law prescribes extremely severe penalties for the practice of torture during the detention and examination of accused persons. Torture is prohibited by article 22 (a) of the Constitution and articles 332 and 333 of the Penal Code designate the practice of torture as a punishable offence and, in certain circumstances, as a felony. Article 137 of the Code of Criminal

Procedure regards a confession made by an accused person under physical or psychological duress as legally invalid. In actual fact, the criminal courts have convicted and sentenced a number of persons guilty of this offence. As stipulated in Directive No. 4 of 1988, one of the most important duties of members of the Department of Public Prosecutions is to monitor investigation procedures and inspect prisons and places of detention in order to ensure that the law is respected and that detainees are being well treated and not subjected to violations. The Ministry of Justice, in collaboration with the Ministry of the Interior, is constantly monitoring the proper application of the provisions of the law, regulations and directives concerning places of detention through joint committees consisting of senior officials of these two ministries.

Although we cannot categorically deny that some practices of this nature have occurred, whenever they come to the notice of the competent authorities their perpetrators are called to account in accordance with the law. In this connection, it should be noted that a number of investigating officers have been referred to the competent courts and sentenced in accordance with the law. The following court judgements have been handed down in this regard:

(a) Judgement No. 334/M/1983 of the Misdemeanours Court at Saddam City;

(b) Judgement No. 397 of 25 July 1987 of the Court of Cassation;

(c) Judgement No. 1590 of 13 June 1988 of the Court of Cassation;

(d) Judgement No. 256 of 19 July 1989 of the Criminal Court in the governorate of Qadisiya.

(Annex I contains copies of the above-mentioned judgements.)

Allegations concerning assassination and summary execution

(a) Acts of political assassination

The allegations concerning widespread political assassinations in and outside Iraq are questionable, since they do not make detailed reference to specific incidents and names. With regard to the military leaders mentioned, we wish to point out that they were senior commanders who died in the line of duty and of whom the Government and people of Iraq are proud due to the major role that they played in defending their homeland. The information media published details of the incidents in which they lost their lives. Details of the helicopter incidents in which these military leaders died are given below:

(i) Staff Brigadier General Tahir Abdul Rashid

On 23 July 1988, the helicopter in which Staff Brigadier General Tahir Abdul Rashid was conducting a reconnaissance operation on the battlefront came under enemy fire and was forced to make an emergency landing. On alighting from the helicopter, he failed to observe the safety

instructions and received a severe blow on the head from the main rotor blade, as a result of which he died. The helicopter pilot is still living. A commission of inquiry was established to determine the extent to which his death could be regarded as in the line of duty in order to safeguard his rights and entitlements. Details of the incident were included in the daily operations report that was submitted to the higher authorities.

(ii) Staff Major General Salman Shuja'

On 31 July 1988, the helicopter in which Staff Major General Salman Shuja' was conducting a reconnaissance and command operation on the battlefront came under direct enemy fire, as a result of which it crashed, killing him and one of the pilots. The other pilot survived and remains in the service. A commission of inquiry was established to determine the extent to which his death could be regarded as in the line of duty in order to safeguard his rights and entitlements. Details of the incident were included in the daily operations report that was submitted to the higher authorities.

(iii) Staff General Adnan Khairallah Talfah

On 5 May 1988, the helicopter in which Staff General Adnan Khairallah Talfah was returning from Mosul to Baghdad found itself in an abnormal situation due to bad weather conditions, reduced visibility and dust-storms, as a result of which the crew lost control of the machine, which crashed and was totally destroyed, killing all its passengers. A commission of inquiry was established to determine the extent to which his death could be regarded as in the line of duty in order to safeguard his rights and entitlements. Details of the incident were included in the daily operations report that was submitted to the higher authorities. A technical air safety commission was also established and published its report in the Qadisiya newspaper on 7 May and 11 June 1989 (annex II).

(b) Summary or arbitrary executions

The references to summary executions in March and April 1991 are astonishing, since it was the insurgents who carried out summary executions of many innocent persons, including patients who were disconnected from medical apparatus and thrown out of hospitals. Many of the witnesses who are still alive have confirmed the atrocious acts of murder committed by the subversives. In this connection, we wish to point out that the number of persons whom they executed amounted to more than 2,500. The following have also been discovered:

(i) A mass grave in the city of Sulaimaniya, in which 370 citizens were buried;

(ii) A mass grave in the Kut Sawadi area on the Iraqi-Iranian border, containing the bodies of 150 persons who had been killed by the groups participating in the disturbances;

(iii) Another mass grave containing 50 bodies in the Kushk al-Basri area of the governorate of Basra.

Many persons also disappeared during those disturbances and, up to the time of preparation of this report, the governmental authorities had been unable to trace them. The military operations conducted by the Iraqi armed forces to restore security and stability in the governorates in which the disturbances occurred obviously led to the deaths of many of the persons participating in those disturbances, in addition to members of the Iraqi armed forces, during the exchanges of fire between the two sides. Such consequences cannot be avoided in situations of that type.

Suppression of the civil disturbances

Iraq has already replied, on many occasions, to the allegations concerning the use of chemical weapons in Halabja and other towns. It has pointed out that it was the Iranian forces who used chemical weapons, since it was they who were occupying the town of Halabja. This was confirmed by the analytical study prepared by the United States Department of Defense and published in the Washington Post on 3 May 1990. That study concluded that it was Iran which used chemical weapons, by firing artillery shells filled with cyanide gas at Halabja when the Iranian commanders mistakenly believed that the Iraqi forces were occupying the town, which had a population of 75,000 persons before the war. Moreover, Iran's affirmation, on 20 March 1988, that many of the victims at Halabja had been killed by cyanide gas was an important indication of the fact that Iran had been covering up its use of that gas.

A Pentagon official said: "We know that Iraq has not used cyanide gas. We have a very good idea of the nature of the chemical agents which Iraq is developing, manufacturing and using." He went on to say: "We know that Iraq has not used any types of such agents and we are convinced that Iran has used cyanide gas."

Iranian Revolutionary Guards fought beside the Kurdish militias in the battle in which the Iraqi forces overran the area to the east of Halabja and captured the neighbouring town of Khormal. The Kurdish militias had infiltrated on 16 March 1988 and had prepared the way for their Iranian allies to enter the town on the following day. Whereas the Iranian leaders claim that the Iraqis used chemical weapons against the town, the leaders of the Kurdish militias at Halabja affirm that the town had been bombarded with chemical weapons from Iranian positions to the east and from Iraqi positions to the west (annex III).

With regard to the disturbances and their consequences, we wish to point out that, following the cease-fire after the aggression by the coalition forces led by the United States of America, some Iraqi towns were the scene of disturbances caused by groups of outlaws who attacked persons and official as well as religious, social and educational institutions and places of worship, which they converted into bases and command posts in which they committed the

most abominable acts of torture, murder and rape of innocent citizens who refused to collaborate with them. They also burnt and destroyed the contents of those institutions. These acts of widespread sabotage and the forms of pillage, murder and sexual assault to which innocent civilians were subjected led to a complete breakdown of public order and security and endangered the lives and property of citizens. The competent authorities therefore fulfilled their customary duty by opposing those acts of anarchy, sabotage and subversion in order to restore order and security, enforce the rule of law and prevent any violations.

The acts of sabotage and aggression continued for several days before the official authorities were able to exert their authority and restore order and security in all spheres of daily life in the places in which those criminal acts occurred. The subversives used various types of heavy weapons which they had seized in the military barracks that they captured and, consequently, the governmental authorities were forced to take appropriate measures to confront them. These confrontations inevitably led to loss of life not only among innocent civilians, regardless of their religious beliefs and their confessional and ethnic affiliations, but also among the police and security forces and the subversives and infiltrators themselves.

With regard to the allegations concerning the use of phosphorus and napalm bombs, it is sufficient to note that the fighter aircraft belonging to our air force were forbidden to fly. The helicopters supported our military units in their operations to rid the northern region of saboteurs and did not use such weapons; they merely fulfilled their duty by opposing the armed saboteurs and returning their fire. The Iraqi armed forces did not use any chemical weapons.

<u>The taking of hostages and the use of persons as human shields during acts of aggression</u>

The refusal to allow foreigners to leave Iraq after August 1990 was a preventive measure designed to avert military aggression against Iraq. However, in response to the appeals of humanitarian organizations, and in order to protect their lives, they were all allowed to depart before the outbreak of the war. It should be noted that they were provided with every facility for their comfort and health care during their stay in Iraq.

In this connection, we wish to point out that some of the coalition States detained Iraqis residing in their territory, particularly military and civilian students, whom they held until the cease-fire. It is noteworthy that the question of the refusal to allow foreigners to leave Iraq was dealt with in the Security Council resolutions that were accepted by Iraq. It should also be borne in mind that article 12, paragraph 3, of the International Covenant on Civil and Political Rights permits restriction of the right of residents to leave a country if such restriction is necessary to protect national security.

Laws in force

A. Political organization

The allegation that the Constitution and the composition of the Iraqi Government do not represent the free will of the Iraqi people totally disregards the true manner in which the political regime in Iraq represents the will of the people. Since the changes that were brought about between 17 and 30 July 1968 embodied the will of the people, the Revolution Command Council is considered to be the true representative of the Iraqi people's will. Indeed, article 1 of the current Iraqi Constitution indicates that Iraq is a sovereign people's democratic republic and article 2 stipulates that the people are the source of legitimate authority.

As for the Revolution Command Council itself, article 37 (a) stipulates that the Revolution Command Council is the supreme body in the State which, on 17 July 1968, assumed responsibility for the realization of the collective will of the people by wresting authority from the corrupt, individualistic and reactionary regime and returning it to the people.

The allegation that the executive authority routinely encroaches on other authorities is untrue and contrary to the Constitution. In this connection, we wish to refer to the powers exercised by the Revolution Command Council under the terms of article 42, paragraphs (a) and (b) of the Constitution. According to this article, the Revolution Command Council is empowered to promulgate laws and decrees having the force of law, in addition to decisions concerning the requirements for the implementation of provisions already in force.

The relationship between the Revolution Command Council and the National Assembly is defined in articles 52 and 53 of the Constitution, which read as follows:

Article 52: The National Assembly must examine bills of law proposed by the Revolution Command Council within 15 days from the date on which they reach the office of the President of the National Assembly. If the Assembly approves the bill, it is referred to the President of the Republic for promulgation. However, if it is rejected or amended by the National Assembly, it is sent back to the Revolution Command Council. If the latter accepts the amendment, the bill is then referred to the President of the Republic for promulgation. If, on the other hand, the Revolution Command Council persists in its opinion at the second reading, the bill is again brought before the National Assembly for discussion at a joint session of the Revolution Command Council and the National Assembly and the decision reached by a two-thirds majority is regarded as final.

Article 53: The National Assembly must examine, within 15 days, any bill of law submitted to it by the President of the Republic. If the National Assembly rejects it, it is referred back to the President of the Republic, with a statement of the reasons for its rejection. If the National Assembly

makes any amendments, the amended bill is referred to the Revolution Command Council. If the latter approves the amendments, the bill can be promulgated. However, if the Revolution Command Council refuses to amend the bill or makes a counter-amendment, it is referred back to the National Assembly within seven days. If the National Assembly adopts the opinion of the Revolution Command Council, the bill is then referred to the President of the Republic for promulgation. If, on the other hand, the National Assembly persists in its opinion at the second reading, a joint session of the Revolution Command Council and the National Assembly is held and the decision reached by a two-thirds majority is regarded as final, after which the bill is referred to the President of the Republic for promulgation.

Article 4 of the Council of Ministers Act No. 20 of 1991 stipulates that the Council of Ministers exercises the following powers:

1. Drafting of bills of law for submission to the President of the Republic for promulgation in accordance with the provisions of the Constitution.

2. Drafting and promulgation of regulations, with the exception of the special regulations applicable to the Ministry of Defence and the bodies and departments responsible for security which must be promulgated by the President of the Republic.

3. Monitoring the application of legislation and promulgation of the decisions needed for its enforcement.

4. Supervision of the legality of instructions issued by the competent ministers to facilitate the application of laws and regulations.

During the last two years, the total number of bills of law submitted to the National Assembly amounted to 105, of which 60 were adopted without amendment, 41 were amended and 4 were rejected. During the same period, the Revolution Command Council promulgated 262 decisions.

The constitutional powers vested in the Chairman of the Revolution Command Council are defined in article 44 of the Constitution, as amended by Decision No. 680 of 1987, which reads as follows:

"The Chairman of the Revolution Command Council exercises the following functions:

"(1) Presiding over the Council's meetings, representing the Council, directing its sessions and administering its financial affairs;

"(2) Signing any laws promulgated by the Council;

"(3) Signing the Council's decisions which have the force of law. He can also delegate this function to any other person of his choice;

"(4) Supervising the work of ministries and other government departments, consulting with ministers on the affairs of their respective ministries, calling them to account if necessary, and keeping the Revolution Command Council informed of the outcome."

The accountability of the Chairman of the Revolution Command Council

Article 45 of the Constitution stipulates that the Chairman, Vice-Chairman and members of the Revolution Command Council are held accountable for any breach of the Constitution.

Elections

Elections to the National Assembly have been held on three occasions, in 1980, 1984 and 1989. In view of the promulgation of the Political Parties Act and the expected adoption of the new draft constitution in the near future, early elections to the National Assembly will probably be held to take into account the requirements of the new era characterized by greater democratization and a multi-party system. It is noteworthy that the new draft constitution makes no reference to a Revolution Command Council; it provides for the establishment of an Advisory Council working with the National Assembly. The principle of election of the President of the Republic is reinforced by direct and secret public ballot. (See the National Assembly Act and its Rules of Procedure in annex IV.)

Appointment of governors and mayors

Governors and mayors are appointed on the basis of their attested competence and integrity either in accordance with the Governorates Act of 1969, under which governors are appointed by presidential decree on the recommendation of the Minister of the Interior and with the approval of the Council of Ministers, or in accordance with a decision of the Revolution Command Council. Mayors are appointed by the Minister of the Interior in accordance with the Administration of Municipalities Act No. 165 of 1964, as amended.

B. The functions of the judicial authority

Chapter 5, section 4, articles 63 and 64, of the Constitution contain specific provisions concerning the judiciary. Article 63, paragraph (a), stipulates that the judiciary is independent and subject to no authority other than the law and that the right of legal redress is guaranteed to all citizens. The law defines the manner in which the courts should be constituted, as well as their jurisdictional hierarchy and the conditions for the appointment of judges. The Judicial Organization Act No. 160 of 1979 embodied these constitutional principles, thereby affirming the judiciary's total independence of the executive authority. The long-established independence and integrity of the Iraqi judiciary cannot be impeached by biased and unfounded allegations. Judges are carefully selected from amongst the most highly qualified jurists and lawyers and the rules governing their

eligibility and selection are based on clearly defined, meticulous, scientific principles.

(a) With regard to the questions raised in this connection:

All Iraqi judges must be graduates of the Law Academy and every candidate for admission to the Academy must be a graduate of a faculty of law and must have worked in legal institutions or as a lawyer for not less than three years before entering the Academy. He has to pass an examination, set by the Academy, in various branches of law for the final selection of the most qualified candidates. Studies at the Law Academy cover two academic years. The first year is devoted to various branches of law, such as criminal law and procedure, civil law and procedure, the law of evidence, family law, Islamic law, methods of investigation, the Arabic language and either the English or French languages. A rigorous written and oral examination is set at the end of the first year and the student then has to undergo practical legal training in the mornings during the second term of the first year and throughout the second year and is required to attend evening lectures on legal theory. During the second year, he continues his practical training in the mornings and attends evening lectures on criminal investigation, forensic medicine, criminal psychology, the conflict of laws, the theory of public prosecution, administrative law and other subjects. The student is also required to prepare a legal thesis, under the supervision of the most eminent judges and university professors, which is then discussed by the Council of the Law Academy, consisting of the President of the Court of Cassation, the President of the State Advisory Council, the Director of Public Prosecutions, the Chairman of the Judicial Supervisory Board, the President of the Baghdad District Appeal Courts and the Director-General of the Law Academy. On passing the examinations, the graduate is appointed as a judge or as a member of the Department of Public Prosecutions by presidential decree.

The judges of the Court of Cassation are senior members of the judiciary who must have had at least 22 years' experience in the legal profession. They must also be graduates of a faculty of law who have worked in courts from the time of their graduation until their appointment to the Supreme Court. The judges of the Court of Cassation are appointed in accordance with article 47, paragraphs 3, 4 and 5, of the Judicial Organization Act No. 160 of 1979, paragraph 3 of which stipulates as follows:

> "Judges of the Court of Cassation are appointed by presidential decree on the basis of a recommendation by the Minister of Justice. They are selected from amongst the highest ranking judges who have held one of the following posts for at least two years:
>
> "(a) President of the Court of Appeal;
>
> "(b) Vice-President of the Court of Appeal;
>
> "(c) Judge of the Court of Appeal;

"(d) Chairman of the Judicial Supervisory Board and Legal Controller;

"(e) President, Vice-President or Counsellor of the State Advisory Council;

"(f) Director or Deputy Director of Public Prosecutions or Attorney General;

"(g) Director-general of a central department in the Ministry of Justice or one of its branches."

Paragraph 4 of the same article stipulates that the Vice-President of the Court of Cassation must be appointed by presidential decree, on the basis of a recommendation by the Minister of Justice, from amongst the judges who have served on the Court for at least three years.

Paragraph 5 stipulates that the President of the Court of Cassation must be appointed by presidential decree, on the basis of a recommendation by the Minister of Justice, from amongst the Vice-Presidents of the Court. At the present time, the Court of Cassation comprises 26 judges. (See annex V.);

(b) The Revolutionary Court, which has now been abolished, was composed of three judges with a juristic background and the Department of Public Prosecutions was represented therein by a public prosecutor with a similar juristic background. The right of defence was guaranteed and the Court applied the provisions of the Penal Code and the other laws in force. It followed the Code of Criminal Procedure and its decisions were final. The confidentiality of its proceedings was a matter regulated by law in specific cases; that applied not only to this Court but also to the ordinary courts if publicity would prejudice the reputation of an individual, public order or public morality. Revolution Command Council Decision No. 140 of 19 May 1991 abolished this court;

(c) From 1987 to 1991, the ordinary courts and the former Revolutionary Court passed 1,714 death sentences for offences prejudicial to internal and external security and also for other offences. It should be noted that, under the Penal Code, political offences are not punishable by death. The number of long-term prison sentences amounted to 7,790, although the vast majority of these were covered by the amnesty decrees.

Offences

With regard to the allegations made in this connection, we wish to provide the following information:

1. In accordance with Revolution Command Council Decision No. 840 of 4 November 1986, 463 convicted persons were sentenced to various penalties involving deprivation of liberty. They were released under the terms of the general amnesty decrees;

2. Only six convicted persons have been sentenced under the terms of article 164 of the Penal Code from 1988 to date;

3. No one has been tried in accordance with Revolution Command Council Decision No. 461 of 31 March 1985; i.e. this decision has never been put into practical effect;

4. Only three persons have been prosecuted under the terms of article 200 of the Penal Code, as amended by Act No. 107 of 1974, Act No. 145 of 1976 and Act No. 111 of 1978. The case against one of them was closed on 6 October 1987 and the other two were released on 13 September 1989 and 16 May 1990 respectively.

Individual cases

(a) The case of His Eminence Grand Ayatollah Sayyid Abul Qasim al-Khoei

Reference has already been made to this subject earlier in our report, in which we stated that he had not been detained and was carrying out his daily activities in a normal manner. With regard to Ayatollah al-Khoei's state of health, he is receiving constant medical attention and he has a physician who has been supervising his treatment, as and when required, for a long time. Doctor Jaafar al-Kuwaiti, a well-known cardiologist, and other physicians from the Saddam General Hospital at Najaf are also tending him.

With regard to the persons named in annex 2, we wish to state that those listed under Nos. 35, 36, 39 and 41 are alive and enjoying full freedom. The competent authorities have no information concerning the others, bearing in mind the fact that Nos. 12, 18, 19, 27, 42, 56, 57 and 59 are names that also appear in annex 1.

(b) The case of Mr. Ian Richter

On 7 February 1987, the Revolutionary Court (which has since been abolished) sentenced Mr. Ian Richter to life imprisonment and a fine of 10,000 dinars in accordance with articles 167/2/b and 289 of the Penal Code. He had been arrested for questioning under the terms of a court order that had been duly issued in accordance with articles 167 and 298 of the Penal Code. When the examining magistrate ordered his detention, he was confined in a detention room equipped with all the necessary facilities during the period of the examination. He received proper health care and food, in addition to the newspapers, letters, books and food that were sent to him by the British Embassy and his wife. He was also permitted to write letters to his family and to receive visits from representatives of his Embassy and his wife during and after the trial.

The charges brought against him and the principal proceedings and circumstances of the case were as follows:

1. Falsification of an import permit in respect of material destined for the Karkh water project and the Qalaat Sukkar water project, which were implemented by the British company Patterson Candy, following the expiration of the import permit for the latter project;

2. Falsification of a letter addressed to the Customs Authority, concerning the cession of a vehicle by the company's first manager to its second manager. The letter was signed in the name of the first manager in an illegal manner;

3. His bribery of a group of persons, including Abdul Wahhab al-Mufti, the convicted former mayor of Baghdad, who were paid 2.5-3 per cent of the value of the contract with a view to ensuring its award to his company. As a result of collusion between him and the accused, he was able to commit fraudulent acts in the implementation of projects, thereby damaging the country's interests in a manner that constituted economic sabotage;

4. The convicted person Abdul Wahhab al-Mufti advised him to leave the country and be on his guard. He also told him to make a false statement to the effect that the fugitive Akram Shammas was the company's legal adviser;

5. He transmitted a forged passport to the accused fugitive Akram Shammas, together with three letters that al-Mufti sent to him in London. He had also been passing bribes between al-Mufti and Akram Shammas;

6. He was convicted on the basis of his full confession to all the charges brought against him, which were substantiated by evidence and by the damaging statements made by Abdul Wahhab al-Mufti. He concluded his confession with the words: "But for Mr. al-Mufti's cooperation and the credit agreements that had been signed by the British and Iraqi sides, it would have been very difficult, if not impossible, to win the contract.";

7. Mr. Richter was informed of the charges brought against him on 17 June 1986;

8. There were no witnesses for the defence in his case, since he had not requested such witnesses;

9. He was visited by the British ambassador and consul and his lawyer on 22 November 1986. They were shown the examination reports, which had been translated from Arabic into English, as well as the statements that he had made during the examination. They held a discussion with him and none of them made any protest concerning his confessions. They discussed this matter with him and he confirmed their truth and accuracy, as well as the correctness of the legal proceedings. The British ambassador and consul both expressed their satisfaction and gratitude when the accused told them that the examination had been fair and that he was being treated in a humane manner. They lodged no protest or objection against the examination proceedings and their representatives and defence counsel attended the subsequent court hearings.

Effect of the recent general amnesty decrees

Following the cessation of military operations by the coalition forces against Iraq, disturbances were instigated from outside Iraq with the participation of groups which crossed the border. These disturbances completed the destruction of what had not already been destroyed by the coalition forces. The persons who participated in the disturbances committed acts of mass murder, rape and pillage. They also burnt and destroyed schools, hospitals, warehouses, government offices, banks and courts of law and stole public and private property, in addition to fomenting ethnic and intercommunal strife among citizens. All these acts are punishable by law. In the face of these acts, the State reimposed its authority and put an end to the disturbances, finally restoring public security and stability on 5 April 1991. When the State reimposed its authority in the governorates in which the disturbances had occurred, many persons who had participated in the disturbances fled the country and induced some population groups to seek refuge in neighbouring countries, particularly Turkey and Iran, by spreading false rumours concerning the measures which the authorities might take against them. In some cases, such groups were used as human shields and the refugees wishing the return to their homeland were prevented from doing so by the subversives holding out in the areas occupied by foreign forces.

The Iraqi Government took steps, both internally and internationally, to repatriate the refugees. At the international level, on 18 April 1991 Iraq signed a memorandum of understanding with Prince Sadruddin Aga Khan, the Executive Delegate of the Secretary-General for the United Nations humanitarian programme for Iraq, Kuwait and the Iraq/Iran and Iraq/Turkey border areas, in which Iraq welcomed the endeavours of the United Nations to repatriate the refugees. In fact, by the month of August 1991, more than half a million persons from the areas that had suffered during the disturbances had returned home.

At the internal level, the Revolution Command Council promulgated a number of amnesty decrees, inviting the refugees to return to Iraq and facilitating their repatriation. In this connection, it should be noted that the number of participants in the disturbances who were arrested and detained by the competent authorities during the course of their operations to restore the rule of law amounted to 15,105, of whom 14,005 were released under the terms of the amnesty decrees due to the lack of proof of their involvement in acts of murder and rape. The number of persons whose involvement in such acts was proved amounted to 1,100. (Their names are listed in annex VI.) The investigation procedures have been completed so that they can be brought before the courts. (Annex VII contains the amnesty decrees promulgated by the Revolution Command Council.)

The number of foreigners arrested and detained on the charge of participating in the disturbances amounted to 62. They were all Iranians and were visited and registered by the delegation of the International Red Cross. They are being detained at camp No. 9 at Ramadi and the Iranian authorities have been duly informed. (Annex VIII contains the names of the Iranians who participated in the disturbances.)

The repeated allegations concerning the detention or execution of refugees, and particularly Kurds, who returned home on the strength of the general amnesty decrees are totally unfounded. These allegations were made by certain parties seeking to discredit those decrees and discourage potential beneficiaries from returning home with a view to maintaining the pressure on Iraq and bringing the country into disrepute in a manner consistent with the international campaign which the coalition States are conducting to the detriment of Iraq's independence and sovereignty, so that this can be used as a pretext for intervening in its internal affairs. These allegations are of an extremely general nature and we hope to be supplied with precise details so that the competent authorities can give specific replies.

The beneficiaries of the amnesty decrees promulgated by the Revolution Command Council

The number of persons who have benefited from those decrees amounts to 24,981. (Annex IX lists those decrees and gives the number of persons who benefited therefrom.)

Treatment of ethnic groups

(a) The Kurdish minority

The reports that Iraq has submitted to the Committee on the Elimination of Racial Discrimination (the eighth, ninth and tenth reports) and to the Commission on Human Rights (the second and third reports) contain an objective review of Iraqi legislation concerning the Kurdish citizens of Iraq, who have been granted autonomy and rights that are not enjoyed by the Kurds in neighbouring countries.

Before replying to the Special Rapporteur's questions concerning the application of this legislation, we feel that we should give a brief summary of this legislation and the obstacles impeding its application.

The legal framework of autonomy in Iraqi Kurdistan

It should be noted that the Kurdish question in Iraq is not new, since it predates the establishment of the Iraqi State. However, the autonomy enjoyed by Iraqi Kurdistan within the legal framework described in this summary was achieved only with effect from the Declaration of March 1970, which constituted an important step forward in regard to the enjoyment of Kurdish rights within the framework of Iraqi national unity.

In Iraq, the requirements for the prevention of racial discrimination in the Autonomous Region are firmly based on the provisions of the Constitution, since Iraq has recognized the ethnic rights of the Kurdish people, together with the legitimate rights of all minorities, within the framework of Iraqi unity.

Article 5 (b) of the Iraqi Constitution stipulates that:

"The Iraqi people consists of two main ethnic groups: Arabs and Kurds. This Constitution recognizes the ethnic rights of the Kurdish people, as well as the legitimate rights of all minorities, within the framework of Iraqi unity."

Article 8 (c) of the Constitution further stipulates that:

"The region in which the majority of the population are Kurds shall enjoy autonomy in accordance with the provisions of the law."

Revolution Command Council Decision 288 of 11 March 1970, which has the force of law, contained the following general guidelines for autonomy:

(a) One of the vice-presidents of the Republic must be a Kurd;

(b) In administrative units where the majority of the population is Kurdish, civil servants must be Kurds or proficient in the Kurdish language;

(c) There must be no discrimination between Kurds and others in regard to access to public office, including key positions in the State such as ministries and army commands, subject to the requirements of competence.

Act No. 33 of 11 March 1974, concerning autonomy for the region of Kurdistan, was promulgated to that end and subsequently modified by Revolution Command Council Decision 28 of 20 September 1978. The following is a review of the principles on which autonomy is based under the terms of that Act.

A. The legal status of the Autonomous Region

Article 1 of Act No. 33 of 1974 stipulates that:

"The region of Kurdistan shall enjoy autonomy and shall be regarded as a separate administrative unit endowed with distinct personality within the framework of the legal, political and economic unity of the Republic of Iraq. The region shall be an inseparable part of the territory of Iraq and its people shall constitute an integral part of the Iraqi people. The city of Arbil shall be the headquarters of the autonomous administration and the autonomous institutions shall form part of the institutions of the Republic of Iraq."

Under the terms of Revolution Command Council Decision 119 of 4 August 1981, the autonomous institutions referred to in the Autonomy Act report directly to the Council of Ministers. This is a clear indication of the legal importance attached to those autonomous institutions.

B. The official language and the language of education in the Autonomous Region

Article 2 of the above-mentioned Act stipulates that:

(a) In addition to Arabic, Kurdish shall be an official language in the region;

(b) Arabic and Kurdish shall be the languages of education, at all stages and in all establishments, for Kurds in the region, in accordance with paragraph (e) of this article;

(c) Educational facilities for members of the Arab ethnic group shall be established in the region. In such facilities, instruction shall be in Arabic and the Kurdish language shall be taught as a compulsory subject;

(d) All residents of the region, regardless of their mother tongue, shall have the right to choose the schools in which they wish to be taught;

(e) All stages of education in the region shall be governed by the general education policy of the State.

Act No. 28 of 1983 stipulated that Arabic and Kurdish would be the languages of instruction for Kurds in the region and that the Arabic language would be taught from the fourth primary grade and at all subsequent stages of education.

C. The rights of citizens, whether Arabs or members of minority groups

Article 3 of the Act stipulates that:

(a) The rights and freedoms of Arabs and members of minority groups in the region shall be safeguarded in accordance with the provisions of the Constitution, the law and the decisions promulgated in connection therewith. The autonomous administration shall be under an obligation to guarantee the exercise of the said rights and freedoms;

(b) Arabs and members of minority groups in the region shall be represented in all the autonomous institutions on the basis of their number in proportion to the total population of the region and they shall have access to public office in accordance with the regulations and decisions pertaining thereto.

D. Basic financial structure and budget of the Autonomous Region

Article 5 of the Act stipulates that the region shall be an independent financial unit within the overall financial unity of the State. Article 6 stipulates that the region shall have its own budget which shall be prepared, drafted and approved in accordance with the principles and guidelines laid down in the regulations in force.

Article 8 defines the budgetary resources of the Autonomous Region as follows:

(a) Locally generated resources, consisting of:

(i) The stipulated income of municipalities;

(ii) The proceeds from sales and services accruing to the autonomous administrative departments;

(iii) The stipulated share of the profits of governmental agencies and institutions included in the region's budget;

(iv) The tax on real estate in the region;

(v) The tax on agricultural land and the proportion of crop yields allocated to agrarian reform in the region;

(vi) The tax on unbuilt landed property in the region;

(vii) The tax on legacies;

(viii) The fees prescribed under the legislative act governing real estate registration fees;

(ix) Court fees and charges in respect of court orders;

(x) Fiscal stamp duty;

(xi) Fees in respect of the registration and change of ownership of vehicles.

(b) Amounts allocated in the regular budget of the State and in the annual investment programme of the national development plan to cover the region's budgetary expenditure with a view to ensuring its development in a manner commensurate with that of all other regions of the Republic of Iraq.

Autonomous institutions

1. The Legislative Council

(a) Terms of reference

The Legislative Council of the Autonomous Region has the following terms of reference, as set forth in Act No. 33 of 1974:

(i) Adoption of the legislative measures needed to develop the region and to improve its local social, cultural and economic facilities within the limits of the general policy of the State;

(ii) Adoption of legislative measures relating to the cultural development and ethnic traditions of the citizens of the region;

(iii) Adoption of legislative measures concerning semi-official departments and institutions and agencies of a local nature;

(iv) Approval of detailed planning proposals prepared by the Executive Council in connection with socio-economic affairs, development projects, education, health and employment in accordance with the State's general central planning requirements;

(v) Ratification of the region's regular budgets after they have been approved by the Executive Council;

(vi) Amendment of the region's regular budget after its approval. Such amendments must remain within the limits of the appropriations made and of the purposes for which they have been allocated and must not conflict with the regulations in force;

(vii) Holding discussions with the Executive Council, and calling the latter to account, on matters falling within its responsibility and terms of reference;

(viii) Establishment of the Council's rules of procedure.

(b) Composition of the Legislative Council

In accordance with Act No. 56 of 15 March 1980, the Legislative Council consists of not less than 50 members chosen by secret ballot in free and direct public elections.

Each member of the Legislative Council represents the entire population of the Autonomous Region. It is not permitted to combine membership of the Legislative Council with membership of the National Assembly. (The purpose of this is to enable the maximum number of Kurdish citizens to participate democratically in the two Councils.) Any citizen meeting the legal requirements may stand as a candidate for membership of the Legislative Council.

(c) Procedures and decision-making of the Legislative Council

The Legislative Council meets at Arbil. At its first meeting, it elects a president and a vice-president, who acts as secretary of the Council. The term of office of the Legislative Council is three years beginning on the date of its first meeting and ending on the conclusion of its final meeting at the end of the third year.

The Legislative Council holds two annual sessions. The duration of each session may be prolonged for a period of one month by decision of the President of the Republic or if so decided by a majority of members of the

Legislative Council. Legislative measures may be proposed by the Executive Council or by 10 members of the Legislative Council.

The Executive Council must promulgate bills of law within 10 days from the date of their submission. During the said period, it may request reconsideration of all or part of a draft bill. However, if the Legislative Council persists in its opinion, the bill is regarded as final and must be promulgated.

Any member of the Council may put questions to, and seek clarification from, members of the Executive Council on matters falling within their respective spheres of competence.

One quarter of the members of the Legislative Council may introduce a substantiated motion for the withdrawal of confidence in the Executive Council or in any of its members. The said motion cannot be discussed by the Council before the expiration of seven days from the date of its introduction and a vote thereon is taken two days after the conclusion of the discussion.

2. The Executive Council

The Executive Council is the executive body responsible for the administration of autonomy in the region. It consists of a President, a Vice-President and a number of members corresponding to the number of autonomous departments.

The President of the Republic appoints a member of the Legislative Council to form and preside over the Executive Council. The names of the President and members are submitted to the Legislative Council for a vote of confidence.

The President and members of the Executive Council hold the rank of minister.

If the President of the Executive Council fails to win the confidence of the Legislative Council, his nomination is withdrawn and another candidate is nominated.

3. Powers of the Executive Council

The Executive Council exercises the following powers:

(a) Enforcement of laws and regulations;

(b) Enforcement of court orders;

(c) Administration of justice and preservation of order and security;

(d) Promulgation of local bills of law approved by the Legislative Council;

(e) Preparation of draft plans for the comprehensive development of the Autonomous Region;

(f) Supervision of local public facilities and institutions in the region;

(g) Appointment of civil servants in the Autonomous Region in cases in which such appointment does not require a presidential decree;

(h) Administration of the region's regular budget;

(i) Preparation of the region's draft regular budgetary estimates for submission to the Legislative Council;

(j) Preparation of an annual report on the situation in the region, for submission to the President of the Republic and the Legislative Council.

4. The relationship between the central authority and the autonomous administration

The relationship between the central authority and the autonomous administration can be defined along the following lines:

(a) With the exception of the powers legally vested in the autonomous institutions, authority in all parts of the Republic of Iraq is exercised by the central institutions;

(b) Departments of the central authority in the region discharge their functions within the limits of their terms of reference and are subject to the jurisdiction of the ministries to which they belong. The autonomous institutions are entitled to submit reports on such departments to their respective ministries;

(c) The President of the Executive Council attends meetings of the Council of Ministers. Secretaries-general of branches of the autonomous administration enjoy membership of the councils of the ministries with which their respective branches have a functional relationship;

(d) The legal validity of decisions taken by the autonomous institutions is monitored by a special body established at the Iraqi Court of Cassation and consisting of the President of the Court and four members chosen by the Court of Cassation from among its own members for a renewable period of three years. Decisions taken by the autonomous institutions are communicated to the Minister of Justice who may contest their validity by lodging an appeal with the special body at the Court of Cassation within 30 days from the date on which they are communicated to him.

In the event of such appeal, implementation of the contested decision taken by an autonomous institution is suspended until a judgement is delivered concerning its validity. Such judgement must be delivered by the special body within 30 days from the date on which the appeal is lodged. Judgements delivered by the special body are final.

Decisions taken by autonomous institutions and which the monitoring body finds to be legally invalid are regarded as null and void, in whole or in part, from the date of their promulgation.

5. Elections to the Legislative Council of the Autonomous Region

In accordance with the Autonomy Act and Act No. 56 of 1980, establishing the Legislative Council, as amended, three elections have been held. In the most recent election, held on 10 September 1989, votes were cast by 784,338 electors, who chose 50 members of the Legislative Council from a total of 174 candidates standing for election in 211 constituencies distributed among the governorates of the Autonomous Region (101 constituencies in the governorate of Arbil, 80 in Sulaimaniya and 30 in Dohuk).

Of the elected candidates, 21 represent the governorate of Arbil, 22 the governorate of Sulaimaniya and 7 the governorate of Dohuk.

It is noteworthy that the citizens of the Autonomous Region have participated with other Iraqi citizens in the election of their representatives to the National Assembly on three occasions, the last such election being held in April 1989. This means that the citizens of the Autonomous Region exercise their political rights at two levels: in elections to the central National Assembly and in elections to the Legislative Council of the Autonomous Region.

6. Obstacles to the optimum application of the Autonomy Act

The difficulties and obstacles with which autonomy in Iraqi Kurdistan has been faced should not be viewed in isolation from the political, geographical, internal, regional and international circumstances and the conflicts that have arisen in the region.

Since the promulgation of the Autonomy Act in 1974, groups of foreign interventionists have endeavoured to obstruct the autonomy plan and the region has been subjected to a series of incidents involving acts of violence and infiltration from the other side of the border. That phase ended in 1975 with the Algiers Agreement between Iran and Iraq and reconstruction work began in the region in order to enable the citizens who had returned to their villages and homes to lead a normal life.

When the armed conflict broke out between Iran and Iraq in 1980, Iraq continued to diligently implement the Autonomy Act, although outside intervention once again impeded it. As a border region characterized by its mountainous and rugged terrain, Iraqi Kurdistan was used for the commission of acts prejudicial to Iraq's national security and some parts of Iraqi territory, including the border town of Halabja, were occupied by hostile forces in March 1988 with the help of some local groups. When Iraqi forces succeeded in liberating that territory, those groups which had collaborated with the hostile forces were frustrated and attempted to incite the local population to leave Iraq by spreading false rumours to the effect that they would probably be endangered as a result of the Iraqi forces' resumption of control over the region.

After the cease-fire between Iraq and Iran on 8 August 1988, Iraq promulgated several amnesty decrees for the benefit of Kurds living in and outside Iraq, with the exception of persons who had committed acts of murder and theft. Most of the refugees returned after the promulgation of those amnesty decrees. However, the situation had barely stabilized when the coalition States hostile to Iraq began the war which lasted from 17 January to 27 February 1991 and was followed by disturbances in northern Iraq, the purpose of which was to destroy the economic infrastructure, loot public and private property and murder citizens. The coalition forces then entered Iraqi Kurdistan, as a result of which the government authorities lost control over the northern part of the country.

When government forces began to restore order in the region, many of its residents were once again induced to seek refuge in mountainous areas in and outside Iraq by false information and rumours which were circulated by various bodies. Iraq cooperated with the United Nations to facilitate the return of those refugees by signing a memorandum of understanding on 18 April 1991. A number of amnesty decrees, to which reference has already been made, were also promulgated for the benefit of the Iraqi Kurds.

In the light of the above, it is evident that the autonomy plan for the region of Iraqi Kurdistan was not given a fair opportunity to achieve the objective for which the Autonomy Act was promulgated. Several negative factors, and primarily external intervention, combined to thwart the plan, the legal framework of which could have been developed through serious dialogue free of external influences. However, during the last few months a series of discussions have been held between the political leadership in Iraq and representatives of Kurdish political parties with a view to devising a better formula for autonomy.

Reply to the questions concerning the Kurdish minority

1. The Kurdish exodus in April 1991

We have already explained the reasons for the Kurdish exodus in April 1991 when the State was re-establishing security and stability in the region after the suppression of the disturbances. The loss of life that

occurred while the Iraqi armed forces were recovering their control over the region was a natural consequence that could not be avoided.

It must be emphasized, however, that the purpose of those military operations was not to persecute the Kurds; it was merely to enable the State to restore security and the rule of law. No operations were conducted with a view to driving out the Kurds; on the contrary, we note that their departure was influenced by the external intervention. The serious intention of the Iraqi Government to encourage those citizens to return is evident from the signing of the memorandum of understanding with the United Nations and the promulgation of the above-mentioned general amnesty decrees.

2. Concerning the percentage of Kurdish citizens in the National Assembly

The number of seats in the National Assembly held by representatives of the population of the Autonomous Region amounts to 36 out of a total of 250, i.e. 14.4 per cent of the total number of seats.

3. Concerning the procedure for the appointment of executive civil servants in the Autonomous Region

Civil servants in the Autonomous Region are appointed by the Executive Council, as explained during our review of the powers of that Council within the legal framework of autonomy, except in the case of persons whose appointment requires a presidential decree.

4. Concerning the Act promulgated in June 1986 regulating eligibility for membership of the Legislative Council

The provision of article 2 of Act No. 56 of 12 June 1986, amending article 15 of Legislative Council Act No. 56 of 1980 and stipulating that candidates for membership of the Legislative Council must believe in the leading role of the Arab Baath Socialist Party, does not mean that a candidate must necessarily belong to that Party. The reference to the "leading role of the Party" merely reflects the actual state of affairs in so far as the Party has been the leading authority in Iraq since the revolution of 17-30 July 1968. Following the promulgation of the Political Parties Act No. 30 of 1 September 1991, the previous legislation, including the provision contained in the amended article 15 of the Legislative Council Act, will be modified in a manner consistent with the multi-party system.

5. Concerning the evacuation of the border strip

When the border villages were subjected to Iranian artillery bombardment and the border areas were used for infiltration operations, thereby threatening the security of the local population, Iraq took a preventive measure to safeguard the security of the local population by establishing a 30 km-deep security zone, from which all residents would be evacuated, within Iraq territory along the country's 1,200 km borders with Iraq and Turkey. That measure was not confined to the region of Kurdistan, since it also

applied to the Iraqi governorates in the central and southern parts of the country. The residents of that zone were transferred to newly constructed residential settlements in which all the requisite services, including electricity, water, schools, clinics and roads, were provided. Evacuated farmers were given agricultural land, together with a financial indemnity, and every family was paid adequate compensation to enable it to build a new house.

It should be noted that this decision was of a provisional nature and was to be reviewed as soon as the reasons that had led to its promulgation were no longer regarded as valid. On 14 January 1991, instructions were issued for the decision to be reviewed periodically at intervals ranging from six months to two years, as a result of which the restrictions have been lifted in some parts of the border strip in the interests of the population. The freedom of citizens to use areas within that strip for agricultural, grazing and other purposes was never restricted at any stage of the evacuation.

(b) The Turkoman minority

In accordance with article 19 of the Constitution, all Iraqi citizens are equal before the law, without any discrimination on grounds of their ethnic, religious or confessional affiliations. Persons belonging to the Turkoman minority enjoy their cultural rights and are entitled to develop their culture through the publication of books and magazines. With regard to the allegations concerning restrictions on property ownership, there is no legal provision applicable to the land registration departments under which a Turkoman Iraqi is obliged to sell his real estate property to an Arab Iraqi. On the contrary, all Iraqis are subject to the same legal regulations concerning the disposal of real estate. However, administrative procedures must be complied with before real estate can be registered in the name of a purchaser. In the governorate of Baghdad, for example, under the terms of Revolution Command Council Decision No. 1562 of 1982, only Iraqis registered as residents of the governorate in the 1977 census are entitled to purchase such property therein. The purpose of this is to halt the increasing migration from rural areas and other governorates to the capital. Many developing countries which are suffering from this adverse phenomenon have been forced to formulate plans and adopt measures to curb it. There are no restrictions on residence in the other governorates, including Kirkuk and Mosul to which the question referred. Ownership of real estate in those governorates is not subject to any restrictions based on ethnic affiliation; there are merely administrative and organizational procedures for town planning purposes.

(c) Expulsion and deportation measures

Large numbers of Iranians were living in Iraq before the Iraq-Iran war. After the Shah's regime was overthrown in Iran, those Iranians living in Iraq began to collaborate with the new Iranian regime against Iraq by engaging in attempts to assassinate Iraqi officials and acts of terrorism directed against such officials and Iraqi institutions. On the outbreak of the Iraq-Iran war, the presence of those Iranians posed a threat to Iraq's security and

territorial integrity due to their collaboration with Iran, their terrorist activities and the atmosphere of fear and instability that they were provoking among citizens. Consequently, their deportation was a legitimate right which any State can exercise against persons who engage in acts of terrorism prejudical to its security and stability and the safety of its citizens.

On the outbreak of the Iraq-Iran war, the defence and security interests of the Iraqi State necessitated the application of the principles of international law that are invoked in time of war. Foreigners holding Iranian nationality or regarded as being Iranians by virtue of their origin and allegiance, were detained and subsequently deported from Iraq. The allegation that Iraq deported them on grounds of their ethnic affiliation is untrue.

What Iraq did was consistent with the Fourth Geneva Convention of 2 August 1949, relative to the Protection of Civilian Persons in Time of War, article 5 of which stipulates as follows:

> "Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.
>
> "Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.
>
> "In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be."

With regard to the position of Iraqi legislation, the Iraqi Nationality Act No. 43 of 1963 did not adopt the principle of ethnic origin as a basis for the granting of Iraqi nationality. Article 3 of that Act stipulated that all adult persons normally resident in Iraq and who held Ottoman nationality prior to the entry into force of the Treaty of Lausanne of 6 August 1924, which recognized the establishment and independence of the Iraqi State, lost their Ottoman nationality and were regarded as Iraqis with effect from the said date.

The Act also contained naturalization provisions under which Iraqi nationality could be granted to foreigners. Although some foreigners acquired Iraqi nationality, others who were living in Iraq did not apply for it at the

time of Iraq's independence and have still not done so, in spite of the promulgation of numerous legislative acts facilitating their acquisition of Iraqi nationality, since they preferred to retain their foreign nationality with a view to benefiting from the rights and privileges enjoyed by Iraqis while, at the same time, avoiding the duties and obligations which the latter assume. Accordingly, they are subject to the Residence of Foreigners Act and the residence permits of those who do not meet the residence requirements can be withdrawn. The only Iraqi citizens against whom deportation orders are issued are foreigners who acquired Iraqi nationality in accordance with the naturalization provisions of the Act, and only after their acquired nationality has been withdrawn from them under the terms of article 19 of the Iraqi Nationality Act No. 43 of 1963 if they have engaged, or attempted to engage, in an activity that endangers the security or integrity of the State. This is because the naturalization of a foreigner is conditional; if he commits an act that endangers the security of the State which granted him this honour, it can be withdrawn from him since he is no longer worthy thereof. With regard to the allegations concerning the deportation of Iraqis and the permanent fear of deportation in which millions of persons are allegedly living, we deny the existence of organized campaigns to deport Iraqis and would like to know the source of the information to the effect that millions of persons are living in permanent fear of deportation. There is no justification for raising a question of such a general nature. The persons who were deported were foreigners residing in Iraq and they were expelled in accordance with the laws in force.

Religious practices and cultural institutions

Over the ages, Iraq has been known as a country of many religions and religious tolerance in which various religious groups and communities have lived in a spirit of fraternal harmony that was an attested source of humanitarian enrichment.

However, in some periods of Iraq's history, this pluralism has been exploited with a view to prejudicing national unity and social harmony by instigating religious intolerance and odious sectarianism. The Iraqi Government, which is aware of the dangers that are threatening society, is diligently endeavouring, in a responsible manner, to promote a spirit of fraternity and tolerance among the people, without any discrimination whatsoever.

Contrary to the allegations made in the reports which affirm that religious leaders are subjected to constant harassment, the State is catering for their welfare, in addition to that of the theologians, students, theological colleges, mosques and holy shrines.

The holy shrines at Najaf and Karbala, like the other religious, historical and cultural institutions in Iraq, are a matter of great and direct concern to the Iraqi Government in view of the high esteem in which they are held by Iraqis and Muslims as part of their glorious historical and cultural

heritage. The Ministry of Awqaf and Religious Affairs is taking full and proper care of those institutions by maintaining, restoring, rebuilding and expanding them. Many of their buildings have been renovated and embellished in such a way as to preserve their architectural style and display them in a manner befitting their spiritual and historical status.

Immediately after the direct military aspect of the aggression ended with the cease-fire on 28 February 1991, groups of Iranians and others who had been trained in Iran infiltrated into Iraq where, with logistical support from the coalition forces, they helped to instigate widespread sabotage and anarchy in the southern and central governorates, including the cities of Karbala and Najaf, which contain holy shrines. The saboteurs occupied those shrines, in which they erected gallows and which they converted into centres for the murder, torture and rape of innocent persons. When they realized that their occupation would be short-lived, they wrecked the premises and plundered the contents of those shrines. In this connection, it is noteworthy that preliminary estimates of the damage caused by those saboteurs amount to 20 million Iraqi dinars, quite apart from other damage which cannot be estimated due to the historical and artistic importance and value of the items concerned. Not content with this, they also stole many valuable objects and extremely important historical manuscripts forming part of the cultural heritage. They burnt the library at the Husseini Shrine, which contained rare religious and cultural books, reference material and manuscripts and plundered all the equipment and objects of value that they found in those mausoleums and shrines.

When the State re-established law and order in those two cities, the Iraqi authorities began to make urgent and comprehensive plans for the repair and reconstruction of those holy places. In fact, the State allocated an amount of 35 million Iraqi dinars (equivalent to $US 105 million), as well as 100 kg of pure gold and 200 kg of silver, for the reconstruction, development, repair and restoration of those holy places.

With regard to the specific information requested, we wish to state as follows:

1. The nature of the numerous religious educational centres ranges from small houses supervised by religious groups to classrooms and colleges of various sizes, some of which are independent while others are attached to mosques. These centres can be found in numerous governorates. The city of Najaf contains 24 colleges that were abandoned due to their dilapidated state, and two colleges that are still operating. Karbala has 10 colleges and Arbil, Kirkuk, Dohuk and Sulaimaniya have two each. Mosul, Aqrah and Tall'Afar each have one college.

2. Mosques

With regard to the number of mosques, congregational mosques and Husseiniyas, Najaf has 69 mosques, a congregational mosque and a Husseiniya; Karbala has 126; Basra 138; Kirkuk 116; Arbil 259; Sulaimaniya 275; Dohuk 109;

and Mosul 465. The mausoleums are distributed as follows: 11 at Najaf, 7 at Karbala, 3 at Basra, 3 at Kirkuk, one at Arbil and Sulaimaniya and 18 at Mosul, which also has 2 Yezidi mausoleums and 5 Christian mausoleums. There are 124 theologians in the governorate of Najaf, 49 of whom are affiliated to religious endowments (awqaf), and 33 at Karbala, 3 of whom are foreigners. There are 15 non-Iraqi theologians and 135 foreign students of various nationalities, including Iranians, Afghans, Indians, Pakistanis, Saudis and Lebanese. The present situation in regard to the Dar al-Hikma and Qazwini theological colleges and the Wadi al-Salam cemetery at Najaf is as follows:

1. The Dar al-Hikma theological college: This was an ancient college belonging to Sayyid al-Khoei in which the majority of the students were foreigners. The saboteurs used it as a base in which they stored various types of weapons and executed many citizens. It was destroyed during the armed clashes that took place between those saboteurs and the Iraqi army.

2. The Qazwini theological college: This was an ancient college, run by Sayyid al-Khoei, at which 50 Iranian students were studying. The saboteurs used it as a base and it was destroyed by fire during the clashes between the armed forces and the saboteurs.

3. The Sheikh al-Tusi Mosque at Najaf is run by Sayyid Hussein Bahr ul-Ulum, a well-known Shi'ite theologian. About 15-20 Iraqi students are still studying there.

4. The Al-Khoei Husseiniya at Karbala: This was destroyed during the clashes between the armed forces and the saboteurs, who had converted it into a base for their operations.

5. The Wadi al-Salam cemetery at Najaf: This is an ancient cemetery on the outskirts of the city of Najaf. The saboteurs took over its buildings and used it as a base for their operations. As a result of the clashes which occurred between the armed forces and the saboteurs, burials therein were suspended for one month but are now proceeding normally.

Access to food and health care requirements

As a party to the International Covenant on Economic, Social and Cultural Rights, Iraq is committed to the provisions thereof and is endeavouring to enable its citizens to exercise their rights more fully, without any discrimination. This has already been stated in Iraq's periodic reports, particularly its report on the application of articles 11 and 12 of the Covenant, as published in document E/1986/4/Add.3 which indicates that Iraqis are exercising the right to an adequate standard of living, as required under the terms of article 11 of the Covenant, as well as the right to the enjoyment of the highest attainable standard of physical and mental health, as required under the terms of article 12 thereof. It is noteworthy that the first and second paragraphs of article 11 refer to the importance of international cooperation, in addition to the national endeavours of States, to ensure enjoyment of the right to an adequate standard of living.

Iraq is among the States which attach special importance to the use of resources in order to ensure an adequate standard of living for its citizens, provide them with health services, subsidize basic foodstuffs to a large extent, supply medicines free of charge to patients in government hospitals and also subsidize the medicines which are sold at pharmacies.

The adoption of Security Council resolution 661 (1990) of 6 August 1990, calling for the imposition of a comprehensive economic embargo on Iraq, dealt a severe blow to the enjoyment by its citizens of their economic, social, health and cultural rights.

The effects of that set-back were aggravated by the war launched by the coalition forces hostile to Iraq, which led to the destruction of the country's economic infrastructure, and the situation became even more serious as a result of the continuation of the economic embargo on Iraq in spite of the fact that it was no longer justifiable after Iraq had accepted the Security Council resolutions adopted after 2 August 1990.

Although article 11 of the International Covenant on Economic, Social and Cultural Rights emphasizes the importance of international cooperation to ensure enjoyment of the right to an adequate standard of living, we believe that international cooperation is taking place in a negative sense with a view to impeding the effective exercise of the Iraqi people's right to an adequate standard of living in regard to food, clothing and housing. This has been confirmed in all the international reports concerning the effects of the economic embargo and the war on the lives of the Iraqi people (such as Mr. Marti Ahtisaari's report contained in document S/22366 of 20 February 1991 and Sadruddin Aga Khan's report contained in document S/22799 of 17 July 1991). In fact, the Security Council has not taken positive and practical steps to exempt food and medicine from the embargo imposed on Iraq.

In the face of this tragic situation, the Government of Iraq has taken every possible measure to enable its people to exercise their right to an adequate standard of living, without any discrimination and with due regard for the circumstances of the economic embargo, and is continuing to provide health services.

We wish to reply as follows to the questions raised concerning food and health care:

1. Access to food warehouses and stocks of medicines

The food warehouses and stocks of medicines in all Iraqi cities are intended for all citizens, without any discrimination. However, these stocks of food and medicines are not distributed to citizens directly. Foodstuffs are distributed through agents who supply citizens with their quotas, on the basis of ration cards, in the light of the number of members in their families. Medicines are distributed to private pharmacies and are dispensed to sick persons on the basis of medical prescriptions. The government hospitals also distribute medicines free of charge to their patients. In this

connection, we wish to point out that there are State-operated warehouses, known as "central markets", at which consumer goods other than those distributed through the ration card system are sold to civil servants and military personnel. These markets were established to help civil servants on low incomes. Other citizens who are not employed by the State can obtain these consumer goods from the consumer cooperative associations, membership of which is restricted to persons unable to benefit from the central markets.

2. Increases in the salaries of government employees

It is a well-known fact that the economic embargo on Iraq and the adverse economic effects of the subsequent war led to a substantial rise in the prices of basic necessities, as confirmed in all the international reports describing the situation in Iraq. The State therefore had to deal with this problem, the consequences of which were being felt primarily by citizens in low-income categories, i.e. government employees and military personnel.

Accordingly, the State decided to increase the salaries of government employees by 30-55 per cent and the pensions of retired government employees by 15-20 per cent. This measure did not involve any discrimination among citizens, since its purpose was to deal with the economic effects of the war on a broad section of the population, namely government employees.

Self-employed persons, such as those exercising liberal professions, were less affected by the rise in the prices of basic necessities, since their incomes usually rise in proportion to the cost of living.

3. Measures taken to ensure adequate allocations for the population

Since the adoption of Security Council resolution 661 (1990), the State has been applying a comprehensive and exemplary system to ensure that its citizens received a minimum allocation of basic foodstuffs, such as flour, rice, sugar, cooking oil, detergents, soap and tea. The monthly per capita allocation amounts to 8 kg of flour, 1 kg of rice, 1.5 kg of sugar, 50 gm of tea, 1 kg of legumes and 50 gm of oil. The cost of these items, which are distributed on a monthly basis, amounts to the equivalent of $US 6 per month, since their prices are subsidized by the State. On the open market, their cost would be 20-30 times higher. However, since this monthly ration does not fully meet the needs of citizens in the quantities that they require under normal circumstances, the State has permitted the private sector to import foodstuffs by its own means. It has been emphasized that these items must be essential commodities listed in the supply schedule and must not involve transfers in hard currency, which cannot be obtained due to the economic embargo.

The monthly allocation of foodstuffs is distributed on the basis of ration cards, which have been supplied to all Iraqi families in all parts of the country and also to Arab and foreign residents of Iraq. These ration cards, which are issued by officials of the Ministry of Trade with assistance from the district and village people's councils, are periodically inspected and verified.

The rationed items are handed to citizens by the 48,823 agents of the State Enterprise for Trade in Foodstuffs. Foodstuffs are distributed without any discrimination among citizens or residents of Iraq, since their distribution is effected on the basis of ration cards.

The widespread destruction of roads, bridges, railways, petroleum installations and food warehouses as a result of the bombing raids carried out by the coalition forces hostile to Iraq caused numerous problems in rural and remote areas during the post-war period. The State-owned food warehouses in a number of governorates were also looted and burnt by groups participating in the disturbances and this led to an acute shortage of stocks of food and medical supplies. At the present time, however, the distribution operations have improved considerably, particularly after the repair of some of the damage caused to the roads and fuel supply routes.

With regard to the measures taken to supply food to the rural areas which suffered greatly as a result of the disturbances, we wish to point out that the distribution system was planned in accordance with the approved system of supply in such a way as to ensure that foodstuffs reach all geographical areas of the country, even the most remote, through an extensive and comprehensive network of private sector trading and transport agents, in addition to the transport fleet belonging to the Ministry of Trade. The supply, distribution and transport systems which are being applied ensure that food reaches all citizens, even those living in the most remote areas, regardless of their ethnic origin and place of residence.

With regard to the measures taken to ensure the supply of pure drinking water, we wish to refer to the report of Sadruddin Aga Khan, which stated that, before the Gulf war, more than 90 per cent of the population of Iraq were supplied with drinking water from a network of about 1,500 water treatment plants and the remainder of the population depended on untreated water from the rivers and springs. However, the water treatment plants and distribution networks were destroyed or damaged during the hostile air raids and about 300 wells, together with their protective installations and pipelines, were also extensively damaged. In this connection we also wish to point out that the damage caused to the bridges destroyed th supply and distribution networks, including the principal pipelines that had been laid from those bridges, quite apart from the severe shortage of aluminium sulphate and chlorine due to the ongoing economic embargo. This situation obviously led to a severe shortage of drinking water in all parts of the country and particularly in the southern marshes and other outlying areas.

<u>The effects of the economic embargo on the health and environmental situation</u>

The economic embargo and the war had serious adverse effects on the environmental and health situation, increasing the incidence of diseases resulting from the lack of medicines and insecticides, in addition to the bombing of drinking water projects, water purification plants and sewage systems. These effects are summarized below:

(a) There was a five to sixfold increase in the annual incidence of typhoid, paratyphoid and amoebic and bacillic dysentery;

(b) The annual incidence of viral hepatitis (types A and B) increased more than eightfold as a result of the bad environmental situation (in the case of type A) and the shortage of laboratory equipment to detect the virus before carrying out blood transfusions (in the case of type B);

(c) There was a cholera epidemic in Iraq after the war and the number of registered cases amounted to 1,217, of whom dozens died. The epidemic would have assumed alarming proportions but for the intervention of international health organizations;

(d) During the period from August 1990 to August 1991, a total of 14,232 persons died under five years of age, i.e. 21 per 1,000 live births, whereas the corresponding number of deaths from August 1989 to August 1990 had amounted to 3,188, i.e. only 5 per 1,000. In other words, there was a fourfold increase. The causes of death were septicemia, emaciation, malnutrition, diarrhoea, acute enteritis, pneumonia and bronchitis.

The number of deaths among persons over five years of age amounted to 36,968, i.e. 2.5 per thousand, whereas the number recorded from August 1989 to August 1990 had amounted to only 13,921, i.e. 0.96 per thousand. It should be noted that the diseases which led to most of these deaths among adults were diabetes, hypertension, cardiac disorders and cancerous tumours.

The State has done its utmost to overcome the serious effects of the environmental and health situation resulting from the economic embargo, the war and the disturbances. However, the State cannot provide the same health services which its citizens were enjoying before the imposition of the embargo until such time as that embargo is lifted, thereby enabling the health institutions to assume their responsibilities without any restrictions.

Finally, the following is a summary of the findings of a survey which was conducted by United States humanitarian organizations, under the auspices of the United Nations, and published at Washington on 22 October 1991: "The infant mortality rate in Iraq has increased fourfold since the end of the Gulf War due to the lack of food and medicine, water pollution and the collapse of the health system."

A survey published at London on Tuesday, 22 October 1991, indicated that the infant mortality rate had increased from 28 per 1,000 before the war to 104 per 1,000 and that 29 per cent of Iraqi children under five years of age, i.e. 900,000 children, were suffering from malnutrition.

Psychiatrists have observed unprecedented levels of anxiety, tension and abnormal behaviour among children of primary school age. They also reported that about two thirds of the children whom they interviewed believed that they would not live to the age of maturity.

A number of physicians have referred to the spread of typhoid fever and cholera in the country and have noted that children afflicted with diabetes or leukaemia are condemned to death due to the total lack of medicine.

In conclusion, the survey warned that thousands of children in Iraq would die unless they were rapidly provided with food and medicine and the lives of dozens of other children were also at risk.

Conclusion

After completing the preparation of this report, reference must be made to the fact that the authorities concerned made diligent and tireless endeavours to complete it on time, although they were faced with considerable difficulties in gathering and coordinating the requisite information due to the consequences of the recent aggression against Iraq, which led to the destruction of the State's institutions and communications, in addition to the acts of sabotage which made it difficult to obtain many of the official documents from the government offices affected, including the courts of law.

But for the tight deadline, the authorities had hoped to prepare a more detailed report in a manner consistent with Iraq's desire to cooperate closely with the Special Rapporteur so that he can fulfil his task in the most satisfactory way. In spite of those problems, however, the authorities are continuing to follow up on the questions that have not been covered in a detailed and specific manner in this report and they hope to deal with them in the near future with a view to preparing their replies, as far as possible, before the Special Rapporteur's visit at the beginning of next year. They will also keep him informed of all new measures, developments and additional information in the field of human rights within the context of the State's review of all the legislation necessitated by the circumstances, as well as its examination of the questions raised, in such a way as to promote human rights and overcome the difficulties and obstacles impeding the achievement of that objective.

Iraq is looking forward to further cooperation with the Special Rapporteur and hopes that the information contained in this report will be considered in an objective manner, taking into account the circumstances with which the country has been faced, and is still being faced, as a result of the ongoing economic embargo which disregards the most fundamental rights that should be enjoyed by human beings, namely the right to life and to an adequate standard of living.

In conclusion, Iraq will do its utmost to further the Special Rapporteur's task in a manner conducive to the promotion of human rights and hopes that his forthcoming visit to Iraq will provide an opportunity for closer cooperation so that he can fulfil his task in the most satisfactory way.

Appendix

The following constitutes the list of annexes attached to the reply of the Government of Iraq to the Special Rapporteur's memorandum:

Annex I	Court judgements in cases of torture
Annex II	Report of the Technical Commission concerning the accident in which the late Staff General Adnan Khairallah died
Annex III	Article published in the Washington Post concerning the use by the Iranians of chemical weapons at Halabja
Annex IV	The National Assembly Act and its rules of procedure
Annex V	Members of the Court of Cassation
Annex VI	Names of the persons accused of participating in the disturbances
Annex VII	The amnesty Decrees
Annex VIII	The names of Iranians participating in the disturbances
Annex IX	List containing the numbers of the amnesty Decrees and the number of persons benefiting therefrom

IV. GENERAL CONSIDERATIONS

Initial remarks

56. At this still somewhat early stage in the Special Rapporteur's course of studying the situation of human rights in Iraq, the Special Rapporteur finds it premature to render any definitive conclusions. Instead, the information received, based on the initial written exchange, essentially permits only comments on the general arguments advanced. It is hoped that the continuing gathering of information and ensuing dialogue with the Government of Iraq will permit such conclusions in the Special Rapporteur's final report to the Commission on Human Rights in February 1992.

57. In the remarks which follow the Special Rapporteur notes that a number of his questions have not been answered. In this connection, he also notes that it is the intention of the Government of Iraq "to follow up on the questions that have not been covered in a detailed and specific manner in this report" and that it hopes "to deal with them in the near future with a view to preparing ... replies, as far as possible, before the Special Rapporteur's visit". He therefore looks forward to receiving such forthcoming information, and expresses the hope that this will lead to further clarifications.

58. By way of replying to various of the general arguments advanced by the Government of Iraq, in both the introduction to its reply and throughout its text, he must first reiterate the terms of his mandate which strictly limit him to a study of "violations of human rights by the Government of Iraq". Thus, while it may be true that other abuses have occurred on the territory of Iraq for which the Government of Iraq could not be held responsible, such violations fall outside the scope of the Special Rapporteur's terms of reference.

59. Given the terms of reference already referred to, the Special Rapporteur notes that the obligations of the Government of Iraq under international human rights law arise largely from conventions freely entered into by Iraq. These obligations are of both an active and a passive nature, and imply responsibilities for both acts and omissions. As regards the important element of State responsibility just mentioned, he observes that frequently the general tenor of the Government's reply aims to avoid responsibility by asserting mitigating factors, attributing to others or simply denying allegations.

60. With regard to asserted mitigating factors, the Special Rapporteur acknowledges the lasting circumstances of the Iraq-Iran war through most of the last decade. However, it must be pointed out that the international law of human rights takes account of such factors by permitting derogations from certain obligations, as is the case with the International Covenant on Civil and Political Rights according to article 4. But the corpus of non-derogable rights is not, and cannot be, susceptible to arbitrary dilution on account of variously proclaimed "mitigating circumstances" because: (1) the logic of international human rights law simply cannot envisage any circumstance

requiring a State, e.g., to allow torture; and (2) the notion of variable standards for inviolable fundamental human rights would undermine the foundation of human rights as equally inherent in each and every human being. Here it is worth noting that even international humanitarian law, proceeding from a somewhat different premise, does not permit such acts as torture or summary or arbitrary execution between combatants, much less civilians. The Special Rapporteur observes, however, that Iraq has not found it necessary to derogate from its obligations even amid such circumstances as it now asserts constrain it. Certainly, without such derogations accompanied by precise reasons and defining the exact extent of the derogations, he must assume that all normal standards apply.

61. With respect to economic, social and cultural rights, the Special Rapporteur similarly notes that "mitigating factors" are taken into account by the nature of the obligations which essentially require the Government to do its best with its available resources. As such, attention must be paid inter alia to matters of equitable distribution of limited resources on a non-discriminatory basis. Moreover, it must be remembered that Iraq is not a poor country and that it still possesses significant resources which must be taken into consideration in assessing its compliance with its international obligations.

62. Turning, thus, to the specific replies of the Government of Iraq, the following considerations are in order.

A. Arbitrary detention

63. In assessing the questions put by the Special Rapporteur as "very general and abstract", the Government of Iraq chose, in fact, not to reply to the specific questions asked, but rather to describe the general provisions of Iraqi law relating to detention. While the Special Rapporteur appreciates that the Government of Iraq has provided its relevant constitutional and penal legislation, it must be stressed that compliance with international human rights obligations cannot be inferred from the mere existence of legal provisions. Of note is the Government's reference to article 92 of its Code of Criminal Procedure (Act No. 23 of 1972) which articulates a law specifically providing for exception. However, there is no elaboration of the terms of this exception. With this in mind, the Government's choice not to respond to the direct questions is disconcerting. In particular, failure to indicate the number of applications received and granted under the equivalent to a writ of habeas corpus (article 1 (a) of the Code of Criminal Procedure, as indicated by the Government of Iraq) stands out in this regard. Likewise, and perhaps more importantly, is the failure of the Government to indicate the number of persons taken into custody without the legal possibility of such a safeguard, i.e. those cases falling under the exception indicated in article 92.

64. The Special Rapporteur must point out that the Government of Iraq did not so far reply specifically to the allegations that "thousands of persons have been arrested and detained by government forces without ever being informed of charges against them, without access to legal counsel or due process of law, and often without the opportunity to contact their relatives or anyone else", or "that such practices of arrest and detention extend to women, children and the elderly". As such, it could appear that some very significant part of all cases of arrest and detention in Iraq fall under the regime of the permissible exceptions to the general provisions. Equally, the Government's references to the limits of authority and the provisions of the law pertaining to the investigating officer beg questions establishing those limits and defining the exceptions. Clarifications are also needed concerning the reference in Revolution Command Council Decision No. 26 of 1971 to "non-political persons", and the attendant reference to "breaches of public order and morality" which resulted in 1,610 detentions in 1990.

65. Clearly, the gravity of the allegations recounted by the Special Rapporteur, even if in summary and somewhat general terms, warrant a more detailed reply than a recitation of the general laws in force.

B. Disappearances

66. As reports of thousands of disappearances continue to be brought to the attention of the Special Rapporteur, the assertions of the Government of Iraq that "most of the cases of disappearance occurred during the Iraq-Iran war" and that "a large number of them fled to neighbouring States" can hardly be considered satisfactory. In the first place, many reports of disappearances relate to events in 1991 taking place well within the interior of Iraq. With respect to persons alleged to have disappeared as listed in appendix 1 to the memorandum, the Special Rapporteur also finds it somewhat difficult to believe that those who made these allegations would not be aware of either the death or escape to another country of the persons concerned. In the second place, and irrespective of the correctness of the exact number of Barzani tribesmen missing since 1983, the Government of Iraq has not explained the disappearance of the 2,280 detailed cases of Barzani tribesmen (including children) last seen in Iraqi Government camps at Qushtapa and Diyana in Arbil on 30 July 1983.

67. In view of the significant number of reported cases spanning the last decade and continuing through the present, it could reasonably be expected that the Government of Iraq would have carried out investigations aimed at resolving the reported cases of disappearances, particularly given the Government's own admission of "the difficulties the authorities are facing". This said, it is unfortunate that the Government of Iraq has so far failed to provide information on the steps it has taken to obtain clarifications or on the procedural recourses available for the investigation of such reports as had been requested in the memorandum.

C. Torture and inhuman or degrading practices

68. As with the Special Rapporteur's summary of allegations and questions concerning arbitrary detention, the Government of Iraq has again chosen to refrain from answering the specific questions in judging the allegations "of a general nature". While reciting the general prohibition of torture in Iraqi law as pertains to the detention and examination of accused persons, the Government nevertheless admits that "some practices of this nature have occurred" and that "criminal courts have convicted and sentenced a number of persons guilty of [exacting confessions under physical or psychological duress]". For its part, the Government asserts that it does not condone such acts, but rather prosecutes perpetrators "whenever they come to the notice of the competent authorities".

69. In view of the seriousness of the allegations made in relation to this fundamental human right, and in light of the Government's own admission that some such practices do occur, it is all the more necessary to identify the specific acts and to establish the actual extent of such practices. In this regard, it must be noted that the Government of Iraq once again did not specifically deal with the general allegations made. Nor, in fact, did the Government even comment on the specific reports of, e.g., women and children being strapped to government tanks during the March uprisings. Further, while four cases of prosecution of delinquent investigating officers are cited, the Special Rapporteur finds it disappointing that his specific requests for information have so far essentially gone unsatisfied. That is, the Government of Iraq did not detail available recourses for complainants; detail available procedures for investigation of complaints; or specify the number of complaints received, the number of investigations conducted, and the number of security personnel disciplined in each of the last four years.

70. Returning to the Government's admission that violative practices do occur, the Special Rapporteur would like to know now even more what measures have been taken to implement the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, should the admitted practices be quite widespread, as reports allege, then the Special Rapporteur must wonder why the Government of Iraq has not taken more determined steps to combat such practices.

D. Extrajudicial killings

71. With respect to the cases mentioned and alluded to under the rubric of "Political killings" in the Special Rapporteur's memorandum, and conscious of the subsequent questioning by the Government of Iraq of their validity in the absence of more specific references, the Special Rapporteur shall pursue the subject in further detail seeking the reply of the Government of Iraq thereupon.

72. In reply to the other allegations summarized and specified by the Special Rapporteur, the Government of Iraq attributes responsibility to the insurgent groups of March 1991. Specifically, the Government states that insurgents committed the acts of disconnecting patients from medical apparatus and throwing them out of windows at Al-Hilla Hospital on 9 March 1991. Although witnesses are said to exist, specific testimonies are not cited and no reasonable explanation is advanced for these acts. In this connection, the Special Rapporteur finds it difficult to believe that local insurgents should go to the trouble of killing sick and innocent persons in their town hospital. With the atrocity itself evidently not in dispute, the Special Rapporteur notes that at issue remains the question of responsibility. In the interest of resolving this issue, the Special Rapporteur stresses the need for an impartial investigation.

73. Focusing only on the events of the March 1991 uprisings, the Government of Iraq fails to reply to the general allegations of previous and continuing acts. In addition, the Government fails to reply to the specific allegation of the "summary execution (by firing squad) of 17 persons in Arbil on 17 April 1991", i.e. some two weeks after the Government's claim to restoration of order throughout the country. Once again, moreover, the Government of Iraq has so far failed to reply to the specific requests of the Special Rapporteur: there is no indication of whether or not a Government inquiry has been constituted to look into the various allegations; there is no specification of the civilian and military laws permitting prosecution of those responsible; there is no citation of the numbers of persons so prosecuted; and there is no indication of the recourses available to the relatives of victims.

E. Control of civil disturbances

74. One of the objectives of the Special Rapporteur's summary of allegations and questions concerning civil disturbances was to determine whether or not the Government of Iraq has in place any special policies or organs designed to respond appropriately. However, the Government of Iraq has so far failed to respond to the specific questions put. The Government chose instead to focus on the events at Halabja in 1988 and the uprisings of 1991. In each case, the Government denies any violations for its part and attributes responsibility elsewhere. Specifically, the Government cites a 1990 Washington Post article in attributing the use of chemical weapons (cyanide) in Halabja to Iran, even though the article clearly states that the massacre "was caused by repeated chemical bombardments from both belligerent armies". On this point, the Special Rapporteur simply notes that, even if the report of the Washington Post would prove to be correct, evidence of wrongdoing by one party cannot be used to excuse or otherwise diminish the wrongdoing by another party. As for the events of March 1991, the Special Rapporteur finds it difficult to believe that the local insurgents, particularly those from the Shiah communities in Najaf and Karbala, would set out to destroy their own places of worship, their own schools and institutions, their own people, their own cultural heritage. Even if they may have used such places for their own protection, the question

remains whether or not it would have been possible to overcome their resistance with the use of less force, and consequently less damage.

75. Further to the alleged use of excessive force to quell the March 1991 uprisings, the Special Rapporteur notes that the Government of Iraq did not so far reply to the alleged indiscriminate bombardment of residential areas in both southern and northern towns and cities. Nor did the Government respond to the allegation that Iraqi forces instructed civilians to evacuate whole towns and larger centres under threat of the use of chemical weapons and gases, though such weapons may not actually have been used. The Government's denial of the use of napalm and phosphorus bombs conflicts, moreover, with reports having reached the Special Rapporteur about refugees suffering wounds caused by these devices. Finally, the Special Rapporteur notes that the acts of a "customary duty ... opposing ... acts of anarchy, sabotage and subversion" and any "return of fire" must be viewed in terms of the principles of necessity and proportionality whereby it is clear that the use of indiscriminate weapons of mass destruction against civilian populations - even insurgents carrying small arms - cannot be tolerated.

F. Hostage-taking and the use of persons as "human shields" during hostilities

76. With respect to the contention of the Government of Iraq that the taking of hostages and the use of persons as human shields was a permissible act under international law, specifically allowed under the terms of article 12, paragraph 3, of the International Covenant on Civil and Political Rights, the Special Rapporteur must point out that such a contention is at odds with both the object and purpose of the Covenant and with the specific intent of the clause, as evidenced by the travaux préparatoires. Indeed, the general theory and fundamental object of international human rights law can never permit the callous use of an individual human being as "a preventive measure designed to avert military aggression". Consequently, the admitted use by the Government of Iraq of persons for this purpose can only be considered a most grave and blatant violation of Iraq's obligations.

G. Laws in force

Political organization

77. The Special Rapporteur is appreciative of the specific replies of the Government of Iraq to most of the requests for information contained in the memorandum of 16 September 1991. This said, however, the Special Rapporteur hopes that the requested information on the governors of all regions and the mayors of all cities with populations exceeding 250,000 shall be forthcoming. In addition, the Special Rapporteur looks forward to receiving copies of the pertinent election laws.

78. In regard to the repeated assertion that "the Revolution Command Council is considered to be the true representative of the Iraqi people's will", the Special Rapporteur notes that the free will of the Iraqi people has yet to be expressed through multi-party elections. Without such a free expression, the Government's claim to represent "the collective will of the people" must remain in doubt, notwithstanding constitutional stipulations. This is particularly so inasmuch as the unelected Revolution Command Council, which "is the supreme body in the State", clearly enjoys a wide latitude in making law and does so virtually without impediment. As the Government's reply makes clear, under the terms of article 42, paragraphs (a) and (b), "the Revolution Command Council is empowered to promulgate laws and decrees having the force of law, in addition to decisions concerning the requirements for the implementation of provisions already in force". With power of appointment over all regional governors and even mayors, the Revolution Command Council is said to be "held accountable for any breach of the Constitution", although accountability to whom is not specified.

Functioning of the judiciary

79. Labelling the summarized allegations "unfounded", the Government of Iraq goes on to describe the normal educational requirements of judges and notes the normal process of judicial appointment. However, in describing the recently abolished Revolutionary Courts, the Government fails to indicate the percentage of cases having resulted in findings of guilt, while it is noted that the decisions of the courts were final. Since the activity of these courts was significant from the coming to power of the Al-Baath Party in 1968, and in so far as thousands of persons allegedly remain incarcerated owing to decisions of these courts, the Special Rapporteur considers it necessary to pursue the examination of this judicial order. So equally must the new order be scrutinized by the Special Rapporteur.

Offences

80. In replying to the specific laws referred to in the Special Rapporteur's memorandum, the Government of Iraq notes that the said laws have resulted in very few convictions and that Revolution Command Council Decision No. 461 of 31 March 1985 has "never been put into practical effect". Nevertheless confirming the existence of these laws, the Government stands responsible for their effects irrespective of the number of prosecutions or convictions to which they have given rise. Clearly, the existence of laws like Revolution Command Council Decision No. 840 of 4 November 1986 inhibits free speech and, therefore, violates an essential human right. Moreover, and notwithstanding the Penal Code's reported prohibition of the death penalty for political offences, the provisions of Revolution Command Council Decision No. 840, article 200 of the Penal Code, Law No. 107 of 1974, Law No. 145 of 1976, and Law No. 111 of 1978 severely restrict freedom of speech and association.

81. Evidently, the existence of the above-mentioned laws is of great concern to the Special Rapporteur and invites a thorough examination of the entire legal system. This must be said, especially given the present failure of the

Government of Iraq to list all the political offences carrying penalties of incarceration or death and to indicate the number of persons arrested under such laws in each year since 1 January 1988.

H. Individual cases

Situation of the Grand Ayatollah Sayyid Abul Qasim al-Khoei

82. The Special Rapporteur is reassured by information that the Grand Ayatollah "is receiving constant medical attention". However, the Special Rapporteur wonders how the assurances of the Government that no restrictions are placed on the personal freedom of the Grand Ayatollah can be reconciled with information reaching the Special Rapporteur that the Grand Ayatollah remains under constant surveillance.

83. With respect to those persons listed in appendix 2 to the memorandum, the Special Rapporteur is extremely disturbed by the report of the Government that it has virtually no information on any of those listed; that information it does report identifies only four persons alive, and essentially affirms that at least eight others (if not all others) were either killed in the disturbances or fled the country at that time. In this connection, the Special Rapporteur must point out that certain of these persons were identified as having gone with the Grand Ayatollah to Baghdad on 20 March 1991. Moreover, should several of these persons have been killed in Najaf, it could be expected that evidence of this would be available. On this point, it must be kept in mind that many of those named in appendix 2 were elderly clerics (some suffering heart problems and other ailments) and so it cannot reasonably be expected that they would either have been actively engaged in fighting or, for that matter, been in such a condition easily to escape some hundreds of miles to the frontiers. Should any of them actually have managed to escape, the Special Rapporteur is confident that information to this effect would subsequently have been available.

Situation of Mr. Ian Richter

84. The Special Rapporteur appreciates the information supplied by the Government of Iraq in relation to this case. However, the Special Rapporteur would still hope to have from the Government of Iraq a detailed description of the evidence against Mr. Richter and information on the number of times and length of each time Mr. Richter was allowed to consult with a lawyer, together with information on whether the defence lawyer was appointed by the Government or freely chosen by Mr. Richter - all matters raised in the memorandum. With regard to any process of appeal, the Special Rapporteur notes that decisions of the Revolutionary Courts (recently abolished) were not subject to appeal. Furthermore, the Special Rapporteur notes the following:

(a) Contrary to the requirements of article 123 of the Iraqi Code of Criminal Procedure, it is alleged that Mr. Richter was not properly informed on 17 June 1986 of the charges against him; it is argued that Mr. Richter

still has not been informed of the exact things for which he has been convicted and sentenced;

(b) While Mr. Richter was arrested on 17 June 1986, it is alleged that the British Consul General was not permitted to see him until 10 July 1986 when the Consul General was allowed merely to view Mr. Richter for five minutes. It is said that Mr. Richter was not allowed proper access to the Consul (and Mrs. Richter) until 1 September 1986, when he was permitted 1 hour and 15 minutes for discussion. Thereafter, it is alleged that further meetings were always in the presence of Iraqi officials, and that written exchanges were subject to censorship;

(c) According to information received, Mr. Richter was permitted access to a lawyer only once, on 22 November 1986, before his trial on 4 February 1987, and the lawyer was himself only permitted access to the prosecution file three days before the trial. Moreover, Mr. Richter is said to have been brought before the Revolutionary Court on 5 January 1987 without the benefit of any representation;

(d) With regard to the reported meeting of 22 November 1986, the British Government reports that it lodged a protest with the Government of Iraq that same day in the matter of the so-called confession; it is alleged that Mr. Richter was required to sign documents in Arabic which he did not understand and that, in any event, the documents were merely an account of his business dealings and not a confession in respect of any criminal wrongdoing. At the 22 November 1986 meeting, it is reported by the British Government that the only thing confirmed was the rough accuracy of the translation of documents originally signed by Mr. Richter in Arabic: on no account did the British Government confirm "the correctness of the legal proceedings". To the contrary, several protests were subsequently launched;

(e) As to the trial itself, the British Government asserts that the trial lasted only 45 minutes, that the alleged "damaging statements made by Mr. Abdul Wahhab al-Mufti" could not be challenged owing to his absence from the court room, and that access to the court room by any other persons (including potential witnesses) was excluded by the authorities; only Mr. Richter's lawyer and the Consul General were permitted to attend.

85. In view of the competing claims regarding the case of Mr. Ian Richter, the Special Rapporteur remains very interested in the information yet to be supplied by the Government of Iraq in answer to his previous requests. Moreover, it shall be necessary to seek further information in regard to the details of this case.

I. Effects of the amnesties

86. The Special Rapporteur is appreciative of the reply of the Government of Iraq to his questions in this matter. It is to be noted that, except for the list of names of foreigners killed during the disturbances and the list of

names of all persons having taken advantage of the amnesties (especially those released from detention), the Government of Iraq has replied to various questions in some detail. While it is clear that compilations of lists of names is not always an easy task to accomplish in a short period, it is yet hoped that the Government will be able to supply a list of all foreigners killed in the disturbances. The Special Rapporteur further notes the willingness of the Government of Iraq to deal with specific questions relating to the arrest of persons who may have tried to take advantage of the amnesties.

J. Treatment of ethnic groups

The Kurdish minority

87. Referring to Iraq's previous reports to the Human Rights Committee and to the Committee on the Elimination of Racial Discrimination, the Special Rapporteur appreciates the summary of the legislation relevant to the Kurdish Autonomous Region but must express disappointment at the failure to implement effectively such legislation over the past two decades. While he appreciates that there may have been certain events constraining the situation in Iraqi Kurdistan through much of this period, it cannot properly be said that the Government of Iraq "was not given a fair opportunity to achieve the objective for which the Autonomy Act was promulgated". In this regard, it appears excessive to place the blame essentially on "groups of foreign interventionists" and other foreign elements. In any event, it is to be hoped that success will soon come to present efforts to devise "a better formula for autonomy".

88. As concerns the specific replies relating to Kurdish participation in the system of government, the Special Rapporteur remains to be satisfied that the administration of the Autonomous Region is freely decided by the Kurdish people. In this regard, it is to be noted that only the President of the Republic may nominate the President of the Executive Council who, in turn, controls the membership of that Council (an effective cabinet). Since all civil servants in the Autonomous Region are appointed by the Executive Council, except for those unspecified positions which require appointment by presidential decree, it would appear that the wishes of the President of the Republic are to be served rather than those of the Kurdish people themselves. This would seem all the more true in view of the quoted legislation that requires candidates for the Legislative Council (from which candidates for the Executive Council may subsequently be nominated) to "believe in the leading role of the Arab Baath Socialist Party", if they are not actually members of the Party. Thus, there cannot be said to be any real pluralism in the ranks of the Executive Council, Legislative Council, general administration or related civil service. In relation to these considerations, the Special Rapporteur still would like to know how the "representatives of the population of the Autonomous Region" in the National Assembly obtain their seats and how many of them are actually Kurds.

The Turkoman minority

89. Notwithstanding the Government's reference to article 19 of the Constitution of Iraq, the Special Rapporteur continues to be concerned about protection of the Turkoman minority. While the Turkoman may be "entitled to develop their culture through the publication of books and magazines", the free use of the Turkoman minority's language remains in doubt in view of the failure of the Government of Iraq so far to respond to the specific questions on this matter. The Special Rapporteur remains similarly concerned about restrictions on the participation of the Turkoman minority in the public institutions and government of those regions where they constitute a large part of the population. Further, the Special Rapporteur remains unsatisfied by the Government's response concerning issues of real-estate transfers. In particular, passing reference to "administrative procedures" in the relevant regions will clearly require examination, even though there may be no legal provision which specifically obliges a Turkoman Iraqi to sell his real estate to an Arab Iraqi as part of a policy aimed at altering the ethnic ratios of the regions.

The practice of expulsion

90. The reply of the Government of Iraq to the questions put on this matter must be regarded as most disturbing. The argument that the Iraqi practices are acceptable because they are permitted by domestic Iraqi law simply begs the question. Rejecting the allegation that thousands of Iraqi nationals have been deported because of their ethnic affiliation, the Government freely admits that many persons were deported because they are "regarded as being Iranians by virtue of their origin and allegiance", in line with Iraqi law. Referring to "those Iranians", the Government justifies its actions by invoking its right to take action against "persons who engage in acts of terrorism prejudicial to its security and stability and the safety of its citizens". Clearly, such actions may only be permitted where there is supporting evidence in each individual case, and not in the case of such a large group as an entire ethnic group, for this would constitute a most extreme version of guilt by association. Even article 5 of the Fourth Geneva Convention of 12 August 1949, to which the Government refers, does not permit such actions: the article refers specifically to the "individual protected person" (meaning those actually holding the nationality of a belligerent State), requires a situation of "absolute military security", requires that "such persons shall nevertheless be treated with humanity" and in no sense condones mass deportations based on "national origin" or ethnicity. Moreover, the argument that "Iraqi citizens against whom deportation orders are issued are foreigners who acquired Iraqi nationality in accordance with the naturalization provisions of the [Iraqi Nationality Act No. 43 of 1963], and only after their acquired nationality has been withdrawn" are they deported must be viewed by the Special Rapporteur as contrary to the requirements of article 15 of the Universal Declaration of Human Rights. This would be especially true if the effect were to cause these persons to become stateless. As such, the practice could only be considered an expulsion in violation of international law. Consequently, and before rendering definitive

conclusions on these practices, the Special Rapporteur must reiterate the request made in his memorandum for copies of the Iraqi laws pertaining to nationality and deportation. Definitions of terminology such as "Iranians" and "foreigners" would also be welcome.

K. Religious practices and cultural properties

91. The Special Rapporteur was interested to read that the Government of Iraq "is diligently endeavouring, in a responsible manner, to promote a spirit of fraternity and tolerance among the people, without any discrimination whatsoever". Concerned by the Government's expressed fear of what it characterizes as exploitation of pluralism "prejudicing national unity and social harmony", the Special Rapporteur would be interested to know what actual steps in law and practice have been taken by the Government particularly against so-called "odious sectarianism".

92. With respect to the various specific questions put in the memorandum, the Special Rapporteur appreciates the information concerning the number of religous institutions and theologians presently situated in the cities at issue, but would hope that the Government will yet supply information concerning the numbers of such institutions and persons as of 1 January 1988, as requested in the memorandum. At the same time, it is disturbing to have received confirmation of the destruction of certain of the holy shrines and religious centres of study, particularly those belonging to, run by or under the name of Sayyid Al-Khoei. As concerns the Government's essential attribution of responsibility for such destruction to "groups of Iranians and others who had been trained in Iran", the Special Rapporteur must reiterate his earlier expressed difficulty in believing that local Shiahs assisted by Iranian Shiahs should commit such outrageous acts of desecration and destruction against their own most holy sites. Acceptance of such an argument is all the more difficult given the extremely widespread extent of the damage.

93. Irrespective of the question of responsibility for the damage caused to the religious and cultural properties under discussion, the Special Rapporteur remains concerned about the methods being employed by the Government of Iraq to repair the damaged properties. On this matter, the Special Rapporteur is again so far without information on the existence of any consultations between the Ministry of Awqaf and Religious Affairs and members of the locally affected religious communities.

94. With regard to the allegations concerning prohibitions and restrictions on various religious practices ranging from traditional dress to the performance of rites, it is to be noted that the Government of Iraq has so far failed to reply. A similar absence of reply is to be noted concerning the allegation that more than 1,000 religious books have been banned by the Ministry of Information. In the interest of clarification, the Special Rapporteur would hope to receive replies to these questions in the near future.

L. Access to food and health care

95. There can be no doubt that the capacity of the Government of Iraq to ensure high standards of well-being in terms of access to food and health care has been impaired by events in the last year or so. However, while the Government may not be in the same position it previously enjoyed, it is another thing to say that the Government of Iraq is unable to meet those minimum standards required under the International Covenant on Economic, Social and Cultural Rights. In this regard, the Special Rapporteur must emphasize the fact that, for example, obligations of non-discrimination arising under article 2 of the Covenant do not depend on the degree of availability of goods.

96. With respect to the contentions of the Government of Iraq that the emerging crisis concerning inadequate supplies of basic foodstuffs and medicines is attributable to the economic embargo imposed by the United Nations under Security Council resolution 661 (1990) of 6 August 1990, and that "[i]n fact, the Security Council has not taken positive and practical steps to exempt food and medicine from the embargo imposed on Iraq", it must be observed that the resolution in question explicitly exempts "supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs" in its operative paragraphs 3 (c) and 4. Indeed, positive and practical steps have been taken in resolution 661 (1990) (together with such subsequent Security Council resolutions as 666 (1990), 669 (1990), 670 (1990), 706 (1991) and 712 (1991)) to monitor the humanitarian needs of the people of Iraq and to react as necessary.

97. In terms of the asserted lack of international cooperation addressing the shortages of foodstuffs and medicines, the Special Rapporteur cannot fail to note the presence in Iraq of several United Nations specialized agencies together with a host of international non-governmental organizations. Moreover, the cited requirements of article 11 of the International Covenant on Economic, Social and Cultural Rights clearly imply the existence of a spirit of cooperation among all parties in order that the needs of the people may be fulfilled and their rights respected. As such, the Special Rapporteur is concerned by the fact that the Government of Iraq has thus far not expressed willingness to cooperate with the United Nations in the sale of oil for humanitarian purposes.

98. Returning to the issue of non-discrimination, the Special Rapporteur was interested to read of the Government's system of State-operated warehouses open only to civil servants and military personnel. Noting also the significant increases in pay provided for all government employees and military personnel, the Special Rapporteur wonders what similar actions have been taken by the Government to react to the as great or greater needs of other parts of the population. In relation to such general policies, the Special Rapporteur would also be interested to know the substance of any special measures which may have been taken to satisfy the needs of the most vulnerable, such as infant children, lactating mothers, the elderly, the wounded and the ill.

Concluding remarks

99. In concluding, the Special Rapporteur would like to express his appreciation for the willingness of the Government of Iraq to enter into a dialogue and to provide further information on the matters raised. In this context, the Special Rapporteur notes with satisfaction the assurance of the Government of Iraq to "do its utmost to further the Special Rapporteur's task in a manner conducive to the promotion of human rights". On a number of questions it would seem clear from both the complexity of the allegations and the arguments of the Government that matters of evidence and proof demand considerably closer examination. Therefore, the Special Rapporteur plans to visit Iraq around the turn of the New Year, as agreed, reporting his conclusions to the Commission on Human Rights at its forty-eighth session.

APPENDICES

1. Persons who reportedly disappeared in southern Iraq in March 1991

	Name	Nationality
1.	Fatima Mohamed	Iranian
2.	Bibi Khamen Khouy	Iranian
3.	Nozhat Mohamed Rida Khalkhali	Iranian
4.	Fayza Mohamed Taqi Khouy	Iranian
5.	Fatima Mohamed Taqi Khouy	Iranian
6.	Lohya Ali Beheshti	Iranian
7.	Hawra Abdelmajid Khouy	Iranian
8.	Hosnia Mohamed Taqi	Indian
9.	Akila Hassan Beheshti	Iranian
10.	Abdelali Bazawi	Iranian
11.	Hachmia Ali Beheshti	Iranian
12.	Fatima Ali Beheshti	Iranian
13.	Ahmed Beheshti	Iranian
14.	Mahmood Beheshti	Iranian
15.	Zineb Beheshti	Iranian
16.	Mohamed Ridha	Iranian
17.	Iftikhar Moussawi Khalkhali	Iranian
18.	Amin Khalkhali	Iranian
19.	Ahlam Azzedin Ali	Iranian
20.	Alala Azzedin Ali	Iranian
21.	Asma Azzedin Ali	Iranian
22.	Mohamed Azzedin Ali	Iranian
23.	Mohamed Taqi Khalkali	Iranian
24.	Fatima Moussawi Khalkali	Iranian
25.	Ali Moussawi Khalkali	Iranian
26.	Layla Moussawi Khalkali	Iranian
27.	Syed Mustafa	Iranian
28.	Yamine Sayed Mustafa Bhar Al Ulum	Iranian
29.	Sheikh Mortadha Borojordi	Iranian

	Name	Nationality
30.	Mehdi Borojordi	Iranian
31.	Sheikh Ahmed Kadhimi Bour	Iranian
32.	Amina Ridha Kadhimi Bour	Iranian
33.	Abdelaziz Kadhimi Bour	Iranian
34.	Sadek Kadhimi Bour	Iranian
35.	Abdelamir Kadhimi Bour	Iranian
36.	Abdelhadi Shirazi	Iranian
37.	Zineb Mohamed Ridha Khalkhali	Iranian
38.	Zaryas Hedi Shirazi	Iranian
39.	Mohamed Ali Shirazi	Iranian
40.	Jawad Shirazi	Iranian
41.	Mohamed Hussein Shirazi	Iranian
42.	Sheikh Muslim Dawari	Iranian
43.	Baqer Mehdi Khalkhali	Iranian
44.	Zirina Zadeh	Iranian
45.	Jawad Mirza Ali Gharouia Zadeh	Iranian
46.	Abdelhussein Qazouini	Iranian
47.	Habib Hosnayan	Iranian
48.	Hussein Qamshadi	Iranian
49.	Sheikh Hussein Fadhili	Iranian
50.	Sheikh Qassim Mohamed Taqi Waïd Zadeh	Iranian
51.	Sheikh Mohamed Isaïe Fayadh	Iranian
52.	Ridha Maraâshi	Iranian
53.	Hassan Ridha Maraâshi	Iranian
54.	Mortadha Kadhimi Khalkhali	Iranian
55.	Mohamed Medhi Khalkhali	Iranian
56.	Sadek Khalkhali	Iranian
57.	Hussein Khalkhali	Iranian
58.	Sheikh Fakhreddine Zikhani	Iranian
59.	Sheikh Kadhimi	Iranian
60.	Sheikh Mohamed Azlat	Iranian
61.	Sheikh Ali Dawry	Iranian

	Name	Nationality
62.	Sheikh Jaâfar Nayni	Iranian
63.	Ala Essid Ali Bahr Al Ulum	Iraqi
64.	Hassan Bahr Al Ulum	Iraqi
65.	Ahlam Bahr Al Ulum	Iraqi
66.	Aïda Bahr Al Ulum	Iraqi
67.	Zahra Bahr Al Ulum	Iraqi
68.	Jawad Bahr Al Ulum	Iraqi
69.	Mohamed Ridha Bahr Al Ulum	Iraqi
70.	Mohamed Hussein Bahr Al Ulum	Iraqi
71.	Hassan Bahr Al Ulum	Iraqi
72.	Sheikh Kadhim Shibr	Iraqi
73.	Mohieddin Gharifi	Iraqi
74.	Mohamed Kalantar	Iraqi
75.	Mohamed Kalantar	Iraqi
76.	Sheikh Abdelghafar Nassari	Iraqi
77.	Sheikh Hassan Nassari	Iraqi
78.	Sheikh Hussein Nassari	Iraqi

2. Persons reportedly arrested with the Grand Ayatollah

	Name	Nationality
1.	Sayyid Ibrahim Al-Khoei	Iranian
2.	Sayyid Mahmood Al-Milani	Iranian
3.	Sayyid Jawad J. Bahrul Uloom	Iraqi
4.	Sayyid Moh'd Ridha Al-Khalkhali	Iranian
5.	Sayyid Murtadha Al-Khalkhali	Iranian
6.	Sayyid Mehadi Al-Khalkhali	Iranian
7.	Sayyid Bakir Al-Khalkhali	Iranian
8.	Sayyid Sadiq Al-Khalkhali	Iranian
9.	Sayyid Mohammad Hussain Al-Khalkhali	Iranian
10.	Sayyid Moh'd Ibrahim Al-Sherazi	Iranian
11.	Sayyid Mo'd Bakir M. I. Al-Sherazi	Iranian

	Name	Nationality
12.	Shaikh Muslim Al-Dawri	Iranian
13.	Sayyid Habib Hussainian	Iranian
14.	Sayyid Moh'd Baqir Hussainian	Indian
15.	Sayyid Moh'd Sadiq Hussainian	Iranian
16.	Sayyid Hussain Jawad Aal Ali	Iranian
17.	Shaikh Hussain Al-Fadhli	Iranian
18.	Sayyid Hussain Al-Qumshali	Iranian
19.	Shaikh Moh'd Ezlt	Iranian
20.	Shaikh Beshir Al-Pakstani	Pakistani
21.	Sayyid Ja'far Musa Bahrul Uloom	Iraqi
22.	Sayyid Ahmed Bahrul Uloom	Iraqi
23.	Sayyid Hasan Musa Bahrul Uloom	Iraqi
24.	Sayyid Mohammad Bahrul Uloom	Iraqi
25.	Sayyid Kamal Moh'd Kalantr	Iraqi
26.	Sayyid Muhsin Bahrul Uloom	Iraqi
27.	Sayyid Moh'd Ridha Musa Bahru Uloom	Iraqi
28.	Sayyid Alaa ad-Din Ali Bahrul Uloom	Iraqi
29.	Sayyid Ali Bahrul Uloom	Iraqi
30.	Sayyid Mustafa Bahrul Uloom	Iraqi
31.	Sayyid Moh'd Amein Bahrul Uloom	Iraqi
32.	Sayyid Izzeddin Ali Bahrul Uloom	Iraqi
33.	Sayyid Mohammad Abood Bahrul Uloom	Iraqi
34.	Sayyid Amaar Bahrul Uloom	Iraqi
35.	Sayyid Moh'd Mehdi Al-Kharsan	Iraqi
36.	Sayyid Moh'd Ridha Al-Kharsan	Iraqi
37.	Sayyid Hadi Al-Kharsan	Iraqi
38.	Sayyid Sadiq Al-Kharsan	Iraqi
39.	Sayyid Moh'd Ali Hadi Al-Kharsan	Iraqi
40.	Sayyid Moh'd Ridha Al-Hakim	Iraqi
41.	Shaikh Ibrahim Al-Naserawi	Iraqi
42.	Sayyid Muhyeddin Al-Ghuraifi	Iraqi
43.	Sayyid Muhsin Al-Ghuraifi	Iraqi

	Name	Nationality
44.	Shaikh Moh'd Hasan Al-Ansari	Iraqi
45.	Shaikh Abdul Jabar Al-Fatlawi	Iraqi
46.	Sayyid Moh'd Taqi Al-Marashi	Iraqi
47.	Sayyid Moh'd Moh'd Taqi Al-Marashi	Iraqi
48.	Sayyid Moh'd as-Sadr	Iraqi
49.	Shaikh Abdul Rahim Al-Garaawi	Iraqi
50.	Shaikh Moh'd Haider	Iraqi
51.	Alla Naseer Al-Gharawei	Iraqi
52.	Hayder N. Al-Gharawei	Iraqi
53.	Abbas N. Al-Gharawei	Iraqi
54.	Mohammad N. Al-Gharawei	Iraqi
55.	Mohammed Jawad Bahrul Uloom	Iraqi
56.	Hasan Bahrul Uloom	Iraqi
57.	Sayyid Mohammad Reza Mousavi Al-Khalkhali	Iraqi
58.	Sayyid Mohammad Taghi Al-Khoei	Iraqi
59.	Sayyid Muhammad Ridha Al-Kharsan	Iraqi
60.	Sayyid Muhammad Al-Sabzwari	Iraqi
61.	Sayyid Muhammad Ridha Al-Salidi	Iraqi
62.	Sayyid Muhammad Saleh Abd Al-Rasul Al-Kharsan	Iraqi